H.R. 863, TO AMEND THE SMALL BUSINESS ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

WASHINGTON, D.C., APRIL 19 AND 20, 1983

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H.R. 863, TO AMEND THE SMALL BUSINESS ACT

TUESDAY, APRIL 19, 1983

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS, COMMITTEE ON SMALL BUSINESS,

Washington, D.C.

The subcommittee met, pursuant to notice, at 9:05 a.m., in room 2359-A, Rayburn House Office Building, Hon. Parren J. Mitchell (chairman of the subcommittee) presiding.

Mr. MITCHELL. Today, we begin hearings on H.R. 863, a bill to amend the capital ownership development program, administered by the Small Business Administration.

I will forego making my complete opening statement. I just want to mention one or two things.

What are we really seeking on behalf of small businesses and minority businesses? We are seeking competitive viability, and I would strongly suggest to you that a number of actions taken by the Small Business Administration over the last few years have not furthered that objective.

Obviously, such things as a fixed program participation term do not enhance competitive viability. My bill, therefore, repeals these terms and replaces them with economic criteria.

H.R. 863 also provides that a firm cannot be denied or suspended from 8(a) program participation without first being afforded an opportunity for a hearing on the record, according to the provisions of the Administrative Procedure Act.

This has deeply concerned me. Some of the actions taken by the Small Business Administration strongly suggest that it has violated due process guaranties.

The legislation that I have submitted would also neutralize the impact the SBA's outdated size standards on the length of program participation. My legislation provides that when computing size, SBA shall not include the gross receipts and employment attributable to the performance of 8(a) contracts. That should be separated out from the matter of size standard determinations.

We have a large number of witnesses today, which include minority business trade organizations, large, small, and suspended 8(a) contractors, business experts, and representatives from various Government agencies and departments.

I am confident that the testimony that we receive over the next few days will be invaluable to this committee during its deliberations on H.R. 863.

I will ask that my entire statement be submitted for the record.

[Mr. Mitchell's statement follows:]

OPENING STATEMENT OF HON. PARREN J. MITCHELL, CHAIRMAN, SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS

Today we begin hearings on H.R. 863, a bill to amend the capital ownership development (COD) program administered by the Small Business Administration (SBA).

The purpose of the COD program is to promote the "competitive viability" of business firms owned and controlled by the socially and economically disadvantaged through the provision of such management, financial and marketing assistance as may be necessary. As a matter of law the authorities contained in section 8(a) of the Small Business Act, relating to the award of negotiated contracts to small disadvantaged firms, can only be used to further the obtainment of the COD program objective—competitive viability. Properly viewed, therefore, 8(a) is only a part of the entire COD effort.

Since "competitive viability" is the program objective, administrative implementation which isolates length of program participation from an assessment of competitive viability clearly strays from both congressional intent and statutory provision. This deviation from purpose can take many objectionable forms. For example, firms should not be allowed to remain in the program for indefinite periods of time, but neither can we legitimately allow the random cycling of firms through the COD program thereby leaving their development a matter of strictly fortuitous circumstance.

Indeed, the measure of program success is not the number of firms which have passed through the program but, rather, the number of firms that have passed the program, that is, have become competitive.

Any administrative action which impedes the accomplishment of this statutory objective must be removed. A system of fixed program participation terms which ignores the reality of business development is one such impediment; contract suspension based on bureaucratic suspicion or reprisal is another; and the imposition of artificial "size standards" which bars the receipt of additional 8(a) contracts is still another form of administrative obstruction to the program's legislated purpose.

H.R. 863 would address each of these issues. It establishes "criteria of competitiveness" in each major business area of finance, management and marketing. The length of program participation would depend on a firm's progress—or lack of progress—as measured by these criteria. If a firm successfully achieves most of its criteria, it would be graduated, but if it failed to make an adequate amount of progress against these criteria, it could be to terminated from program participation. H.R. 863, for the first time, would legislate the terms and conditions governing the length of program participation; it would give the COD program a definite beginning, middle and end.

In addition, H.R. 863 provides that an 8(a) firm cannot be denied or "suspended" from program participation without first being afforded an opportunity for a hearing, on the record, according to the provisions of the Administrative Procedure Act. This section of the bill, therefore, would assure the 8(a) firm access to an impartial reviewer of fact to determine whether program "exit" criteria have been met.

Finally, H.R. 863 would neutralize the impact of SBA's outdated size standards on the length of COD program participation. The bill provides that when computing size, SBA shall not include the gross receipts and employment attributable to the performance of 8(a) contracts.

The present size standards were set in 1975 and never adjusted for inflation. But, there is another reason why it is particularly unfair to measure the size of 8(a) firms against these standards. Size standards, generally, are designed to screen out the more powerful firms from the less powerful. It simply is not logical to enter 8(a) sales into this equation since they are not indicative of competitive strengh and will result in premature program exits—before the firm becomes competitive—and, therefore, defeat the purposes of the program. "Size" cannot be defined fairly if it includes remedial assistance since the standard is designed to differentiate between those that are dominant and those that are not.

Our witnesses include minority business trade organizations, "large", "small" and "suspended" 8(a) contractors, business experts, and representatives from various government agencies and departments. I am confident that the testimony we receive over the next two days will be invaluable to this committee during its deliberations on H.R. 863.

I wish to thank all of our witnesses for taking the time out of their busy schedules to be with us.

Mr. MITCHELL. Congressman Addabbo, who is at the White House, asked that his opening statement be submitted for the record. We also have Mr. Daub's statement for the record.

[Mr. Addabbo's and Mr. Daub's statements follow:]

OPENING STATEMENT OF HON. JOSEPH P. ADDABBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I strongly support H.R. 863 which would establish the necessary economic criteria to determine the competitive viability of an 8(a) firm. It calls for the use of predetermined standards pertaining to financial, management and marketing aspects of business to measure a firms' progress toward becoming competitive. The proper use of this mechanism would allow SBA to successfully achieve the statutory purposes and objectives of the 8(a) program, something which has not been accomplished thus far. In fact, SBA has not graduated one firm for successful completion of the program since 1978.

As original sponsor of P.L. 95-507, again, I reiterate that the purpose of the 8(a) program is to increase SBA's ability to promote the business development of minority owned firms so that they may overcome the economic impediments which have impaired their ability to compete in the free enterprise system. Congress intended to solidify its commitment to assist minority owned firms to enter the mainstream of the economic system, as well as to correct the program abuses resulting from SBA's mismanagement. It is unfortunate that SBA has chosen to transgress the statutory mandates and defy the commitment by assigning an arbitrarily fixed period of program participation of each firm regardless of whether or not it has become competitive.

The efforts now underway to enact H.R. 863 into law reflect a need for congressional action to address SBA's flagrant mismanagement of the 8(a) program. Such action is long overdue. Notwithstanding a number of recommendations made by members of this committee and the House Appropriations Committee for SBA to regulate an equitable size standard for 8(a) firms which would not take into account the gross receipts and employment attributable to 8(a) contracts, SBA has summarily forced 23 8(a) firms from the program although they have not become competitively viable. Absent legislative relief from fixed program participation terms, at least 440 8(a) firms will be forced out of the program within the next year, resulting in irreparable injury to these businesses and a loss of thousands of jobs held by minorities.

Finally, I would like to say that I have never fully supported the concept espoused by P.L. 96-481 much less SBA's misinterpretation of the law. I have always felt that the SBA must carefully monitor and assist the progress of all 8(a) participants to ensure that the intent of their participation under P.L. 95-507 is fully realized.

I urge all members of this committee to support this legislation in order to restore the integrity of the 8(a) program and prevent the failure of hundreds of minority businesses which are close to economic viability.

OPENING STATEMENT OF HON. HAL DAUB, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

I am very pleased that the committee will be again examining the 8(a) program this year. I am certain the witnesses here today will provide us with important information regarding the current administration of the program. I am equally certain that there will be little agreement even concerning what the basic thrust of the program should be.

My view of this program is based on the experiences I have had in Omaha, and my belief that the program should attempt to bring new businesses into the program and that those who have had a sufficient amount of time to demonstrate their business ability must withdraw.

In Omaha I have met with many participants and would-be participants. There is always going to be more people wanting to take advantage of the program than resources will allow and for that reason—in addition to fundamental fairness—there must be a procedure for graduating firms who have exhausted the opportunity to gain experience in a non-competitive environment and whose future viability must occur in the real world.

A good deal of the testimony last year dealt with the amount of time necessary to create a competitive business. Witnesses disagreed as to what was the proper size of firm before it could be considered competitive.

I want to state for the record that I do not believe that the 8(a) program should exist for the purpose of enriching specific individuals, but should instead operate to give owners of disadvantaged businesses the experience and opportunity necessary for them to compete. To claim that to do this a business must be as large as the biggest in the field is clearly ludicrous. We are not here to create businesses that will operate only with the benefit of a Government subsidy. We are here to assist businesses in their early years with the intention of withdrawing after the business has had an adequate time to establish itself.

If a business has the financial and managerial ability to compete then it has no business in the 8(a) program. There are many disadvantaged businesses who have the desire to participate in the marketplace but who need only the lift up that the 8(a) program can provide. I do not want to see these participants languishing on the sidelines while a few large, profitable and well experienced concerns continue to earn large profits through the 8(a) program. Moreover, too long in this program can distort a company's real potential. If a company becomes large and successful only because of 8(a) involvement nothing positive has really happened—the only real successes are those that occur after the participant has left the program and prospered in the competitive environment.

This society has only a limited amount of resources and we owe it to the largest number of minority and disadvantaged individuals to provide an 8(a) program that gives them real hope for the future. If the program creates only a few Government-fostered firms that make big money for their owners but do not provide access for disadvantaged persons to the real competitive world then the program is a failure.

Mr. MITCHELL. I would also ask that a copy of the legislation which I propose, H.R. 863, be submitted for the record; and it is so done.

[The full text of H.R. 863 follows:]

98TH CONGRESS
1ST SESSION

H. R. 863

To amend the Small Business Act.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 1983

Mr. MITCHELL (for himself and Mr. ADDABBO) introduced the following bill; which was referred to the Committee on Small Business

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A BILL

To amend the Small Business Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 7(j)(10)(A)(i) of the Small Business Act is amended to read as follows:

"(i) assist small business concerns participating in the program to develop comprehensive business plans with specific business targets, objectives, and goals. Such targets, objectives and goals shall be designed to result in the competitiveness of the small business concern by eliminating those conditions or circumstances upon which

the Administration originally determined eligibility pursuant to section 8(a)(6). The business plan shall contain predetermined criteria of competitiveness for financial, marketing, and management functions in order to measure the progress toward competitiveness and the estimated time needed to reach such a competitive condition. Such estimated time and the criteria of competitiveness shall be reviewed annually, and shall be adjusted as appropriate.".

SEC. 2. Section 7(j)(10) of the Small Business Act is amended by adding the following:

"(D) A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 8(a) may be denied such assistance only if such concern—

"(i) voluntarily elects not to participate;

"(ii) is terminated pursuant to a termination proceeding conducted in accordance with the provisions of section 8(a)(9); or

"(iii) is graduated pursuant to a graduation proceeding conducted in accordance with the provisions of section 8(a)(9).

"(E) For the purposes of this paragraph the terms 'terminated' or 'termination' shall mean the total denial or suspension of assistance pursuant to sections 7(j)(10) or 8(a) prior to the graduation of a small business concern participating in the program established by paragraph (10) or eligible to receive contracts pursuant to section 8(a). An action for termination shall be based solely on good cause or on the failure of such concern to make adequate progress toward achieving its criteria of competitiveness.

"(i) an action for termination based on good cause shall be instituted only if the Administration reasonably believes that the small business concern or its owners have willfully violated rules and regulations of the Administration pertaining to eligibility, prohibited actions, or the reporting of information.

"(ii) an action for termination based on the failure of a small business concern to make adequate progress toward achieving its criteria of competitiveness shall be instituted only if the Administration reasonably believes that such concern—

"(I) has failed to meet an average of at least 25 per centum of all such criteria in any given fiscal year; or

"(II) has demonstrated a sustained lack of progress over the immediately preceding three fiscal year periods as evidenced by the failure to achieve an average of criteria totaling at least 10 per centum more than the average of such criteria achieved in the immediately preceding fiscal year.

"(F) For the purposes of this paragraph the terms 'graduated' or 'graduation' shall mean the successful achievement of a substantial portion of a small business concern's criteria of competitiveness established pursuant to paragraph (10)(A)(i). An action for graduation shall be instituted only if the small business concern has achieved an average of at least,

"(i) 85 per centum of all of its criteria of competitiveness, and

"(ii) 75 per centum of the criteria of competitiveness in each of the financial, management, and marketing functions to which such criteria pertain.

"(G) For the purposes of this paragraph the term 'criteria of competitiveness' shall mean those predeter-

1 mined standards which, if achieved, would make a
2 small business concern, participating in the program
3 established by this paragraph, competitive with other
4 business concerns which are—
5 "(i) located in the same general geographic
6 area;
7 "(ii) engaged in the same or like industry;
8 and
9 "(iii) not owned and controlled by socially
10 disadvantaged persons as defined by section
11 8(a)(5).
12 "(H) In addition to the requirements of subpara-
13 graph (G), criteria of competitiveness shall be—
14 "(i) expressed numerically;
15 "(ii) divided into individual sets of criteria for
16 each of the following functional business areas—
17 "(I) financial, which criteria shall in-
18 clude key financial ratios ascertained from
19 compilations of such data which are publical-
20 ly available and commercially acceptable;
21 "(II) management, which criteria shall
22 include measures of how the small business
23 concern plans, organizes, staffs, directs, con-
24 trols and reviews each major business oper-
25 ation; and

"(III) marketing, which criteria shall include measures of total sales needed to be competitive, sales trends, marketing efforts (including the identification and segmentation of markets, bidding efforts, promotional efforts, competitive pricing, and public relations), and the ratio of annual sales (other than section 8(a) sales) to total sales, *Provided,* That such criterion shall be set at 4:5 for total achievement; and

"(iii) weighted within each set of criteria described in (ii) (I), (II), and (III) in order to measure the relative importance of criteria within a set: *Provided,* That each functional business area of financial, management and marketing shall be accorded equal overall weight.

"(I) No portion of the gross receipts or employment of a business concern attributable to the performance of a contract or contracts awarded pursuant to section 8(a) shall be included in determining the size of such concern for any program or activity conducted under the authority of this Act or the Small Business Investment Act of 1958.".

SEC. 3. (a) The Small Business Administration shall—

1 (1) within sixty days after the effective date of
2 this section, conduct meetings of present and potential
3 participants in the program established by section
4 7(j)(10) of the Small Business Act to ascertain and
5 consider public comment on the nature and extent of
6 regulations needed to implement this Act;
7 (2) within one hundred and twenty days after the
8 effective date of this section, publish in the Federal
9 Register proposed rules and regulations implementing
10 this Act; and
11 (3) within two hundred and ten days after the ef-
12 fective date of this section, publish in the Federal Reg-
13 ister final rules and regulations implementing this Act.
14 (b) A small business concern participating in any pro-
15 gram conducted under the authority of section 7(j)(10) or eli-
16 gible for the award of contracts pursuant to section 8(a) of
17 the Small Business Act on the effective date of this section
18 shall not be denied total participation in such program or
19 found ineligible for the award of all such contracts pursuant
20 to a fixed program participation term or any other fixed
21 period of time. All determinations regarding such total par-
22 ticipation or such eligibility shall be made pursuant to section
23 7(j)(10)(D) of the Small Business Act.
24 SEC. 4. Section 106 of Public Law 96–481 is hereby
25 repealed.

Mr. MITCHELL. I want to thank all of the witnesses for being here. I have said this so many times, I almost hate to have hearings because when you take business people away from their businesses it hurts.

But it is so necessary for us to hear from people, from the people who are actually doing the work, and I am most appreciative.

Before calling our first witnesses, I was very pleased to see an article in this morning's Washington Post which indicates that Secretary of Transportation Dole will withdraw transportation funds from those States that do not meet their 10-percent minority business floor under the Surface Transportation Act.

In other words, the Secretary is on record as saying that any State which does not comply with the Mitchell amendment to the Surface Transportation Act will be denied funds.

In addition, the Secretary is quoted as saying that there will be full, effective, and complete implementation of the Mitchell amendment to the Transportation Act.

It is very encouraging, and we shall be watching and cheering the Secretary as the implementation proceeds.

Our first panel consists of Mr. Dewey Thomas, the executive director of the National Association of Minority Contractors; Mr. Stephen Denlinger, president of the Latin American Manufacturers Association; Mr. Wilson Chang, director of Business Development for ASIAN, Inc.; and Mr. Clarence Braddock, president of the Black Presidents' Roundtable.

Gentlemen, thank you very much for being here.

I suppose we ought to proceed in the order that you were called.

Again, thanks so much for taking the time to be with us.

PANEL CONSISTING OF DEWEY THOMAS, JR.; STEPHEN W. DENLINGER; WILSON CHANG; AND CLARENCE BRADDOCK

TESTIMONY OF DEWEY THOMAS, JR., EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF MINORITY CONTRACTORS, WASHINGTON, D.C.

Mr. THOMAS. Good morning, Congressman Mitchell.

My name is Dewey Thomas. I am the executive director for the National Association of Minority Contractors.

We were created in 1969 to assist minority contractors, to use that favorite word, "to become more competitive in the marketplace" and also to act as an advocate as relates to their industry.

We have approximately 2,500 members, 34 different States, and also the Virgin Islands.

We are in full support of the proposed legislation. We are in support of the proposed legislation for one valid reason, we feel: That there is no way possible that we can go out as construction contractors and become competitive in the marketplace.

We have prepared an official statement that we would make a part of the record, but I would just like to highlight and not read the actual statement, but just highlight certain points in the statement.

Mr. MITCHELL. Without objection, your entire statement will be submitted for the record.

[Mr. Thomas' prepared statement with attachment follows:]

PREPARED STATEMENT OF DEWEY THOMAS, JR., EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF MINORITY CONTRACTORS, WASHINGTON, D.C.

MR. CHAIRMAN AND SUB-COMMITTEE MEMBERS, ON BEHALF OF THE NATIONAL ASSOCIATION OF MINORITY CONTRACTORS, WE ARE VERY HONORED TO APPEAR BEFORE THIS COMMITTEE AND PROVIDE TESTIMONY DIRECTLY RELATING TO HR. 863. THE NATIONAL ASSOCIATION OF MINORITY CONTRACTORS (NAMC) IS A FULL SERVICE, NON-PROFIT MINORITY BUSINESS TRADE ASSOCIATION, ESTABLISHED IN 1969, TO ADDRESS THE NEEDS AND CONCERNS OF MINORITY CONSTRUCTION CONTRACTORS NATIONWIDE. CURRENTLY, NAMC'S MEMBERSHIP BASE COVERS 34 STATES, THE DISTRICT OF COLUMBIA, AND THE VIRGIN ISLANDS, AND IS HEADQUARTED IN THE NATION'S CAPITOL: AND INCLUDES GENERAL CONTRACTORS, SUB-CONTRACTORS, CONSTRUCTION MANAGERS, MANUFACTURERS, SUPPLIERS, LOCAL MINORITY CONTRACTOR ASSOCIATIONS, FUNDED TECHNICAL ASSISTANCE ORGANIZATIONS, ATTORNEY'S AND ACCOUNTANTS.

AS A FULL SERVICE MEMBERSHIP ORGANIZATION, NAMC'S NATIONAL HEADQUARTERS STAFF IS COMMITTED TO THE ENHANCEMENT OF OUR MEMBER FIRMS AND PROVIDES PROGRAM SERVICES AND ASSISTANCE IN THE FOLLOWING AREAS:

PROCUREMENT

- PROJECT GROWTH -- UNDER A COST-SHARING GRANT WITH THE MINORITY BUSINESS DEVELOPMENT AGENCY, NAMC PROVIDES ASSISTANCE TO TARGETED FIRMS IN PENETRATING THE DEPART-

MENT OF DEFENSE PROCUREMENT PROGRAM. NAMC'S PROCUREMENT KIT IS AN EXCELLENT RESOURCE DOCUMENT FOR THE MINORITY CONTRACTOR AND ORGANIZATIONS PROVIDING TECHNICAL ASSISTANCE AND PROVIDES A SYSTEMATIC PROGRAM FROM CONTRACT IDENTIFICATION TO CONTRACT AWARD.

- MINORITY/MAJORITY PARTNERSHIPS (PRIVATE SECTOR INITIATIVES) -- NAMC NATIONAL HEADQUARTERS WORKS CLOSELY WITH MAJORITY CONTRACTORS AND PRIVATE SECTOR CORPORATIONS IN IDENTIFYING QUALIFIED MINORITY CONTRACTORS TO TAKE ADVANTAGE OF PROCUREMENT OPPORTUNITIES.

NETWORKING

- INFORMATION IS POWER -- NAMC'S NETWORKING SYSTEM PROVIDES TIMELY CONSTRUCTION RELATED INFORMATION TO OVER 3,000 MINORITY CONTRACTORS, PROCUREMENT OFFICIALS IN THE PUBLIC AND PRIVATE SECTORS AND OTHERS ADDRESSING THE NEEDS OF MINORITY CONTRACTORS. PUBLICATIONS INCLUDE:

  -- NAMC PROCUREMENT BULLETIN PROVIDES INFORMATION ON LEGISLATIVE AND/OR POLICY INFORMATION RELATING TO CONSTRUCTION ISSUES ON A NATIONAL, STATE AND LOCAL LEVEL;

  -- NAMC INVITATION TO BID BULLETIN PROVIDES INFORMATION ON UP-COMING CONSTRUCTION PROJECTS;

  -- NAMC BUILDING CONCERNS IS THE ASSOCIATIONS NEWSLETTER THAT BRINGS CONTRACTORS UP TO DATE ON ISSUES AND SERVICES THAT MAY ASSIST IN THE HEALTHY EXPANSION OF THEIR FIRMS;

  -- NAMC INFORMATION BULLETIN PROVIDES OUR MEMBERSHIP WITH REGULAR UP-DATES ON THE ASSOCIATION'S ACTIVITIES; AND

NAMC LEGISLATIVE BULLETIN PROVIDES INFORMATION ON GOVERNMENT AFFAIRS AND LEGISLATIVE ACTIVITY THAT MAY HAVE AN IMPACT ON MBE FIRMS; ISSUES COVERED ARE FROM THE FEDERAL, STATE AND LOCAL POLICIES GOVERNING MINORITY PARTICIPATION.

ADVOCACY

- YOUR VOICE IN WASHINGTON, D.C. -- AS ADVOCATES FOR MINORITY CONSTRUCTION CONTRACTORS, NAMC ACTIVELY MONITORS GOVERNMENT AFFAIRS OF AGENCIES CHARGED WITH PROVIDING OPPORTUNITIES TO ASSIST IN THE HEALTHY GROWTH AND/OR EXPANSION OF MBE'S. NATIONAL HEADQUARTERS STAFF WORKS WITH POLICY-MAKERS, LEGISLATORS, MAJORITY ASSOCIATIONS AND OTHERS IN ORDER TO BETTER UTILIZE SYSTEMS AND PROGRAMS SO THAT THE NEEDS AND CONCERNS OF OUR MEMBERS AND CONSTITUENTS ARE EFFECTIVELY ADDRESSED.

MEMBERSHIP

- MEMBERSHIP IS THE BLOODLINE OF THE ASSOCIATION -- AS A MEMBERSHIP ASSOCIATION, NAMC CONTINUOUSLY SEEKS TO UNITE MINORITY CONTRACTORS NATIONWIDE AND PROVIDE A FORMAT THROUGH WHICH ITS MEMBERS AND CONSTITUENTS CAN COLLECTIVELY WORK, LEARN AND TRAIN.

  NAMC CURRENTLY HAS FOUR PRIMARY AREAS OF MEMBERSHIP; REGULAR MEMBERS ARE MINORITY CONSTRUCTION CONTRACTORS; ASSOCIATE MEMBERS ARE MBE FIRMS; AFFILIATE MEMBERS ARE ATTORNEY'S ACCOUNTANTS, BUSINESS DEVELOPMENT CENTERS, ECONOMIC DEVELOPMENT ORGANIZATIONS, AND OTHERS PROVIDING SERVICES TO MBE'S; AND NAMC CHAPTERS WHICH ARE LOCAL MINORITY CONTRACTORS ASSOCIATIONS THROUGHOUT THE COUNTRY WHOSE GOALS AND OBJECTIVES ARE SIMILAR TO NAMC NATIONAL.

WE HOPE THAT THE TESTIMONY THAT I PROVIDE WILL PROVIDE ADDITIONAL INSIGHT TO THE DEVELOPMENT OF LEGISLATION THAT WILL PROVE TO BE A WORKABLE INSTRUMENT IN IMPROVING THE IMPLEMENTATION AND QUALITY OF SERVICES DELIVERED TO SMALL BUSINESS ENTERPRISES BY THE U.S. SMALL BUSINESS ADMINISTRATION. IN ADDITION TO BEING PLAGUED WITH BUDGET RESTRAINTS AND A LACK OF PERSONNEL RESOURCES, THE SBA ASSOCIATE ADMINISTRATOR HAS HAD HIS/HER AUTHORITY TO EFFECTIVELY MEET THE PROGRAM OBJECTIVES DIMINISHED UNDER P.L. 96-481. IT IS UNFORTUNATE, AND THE RESULTS HAVE BEEN THAT THE MINORITY BUSINESS COMMUNITY IS CONSTANTLY AT ODDS WITH THE SBA.

WE MUST NOTE THAT OUR COMPLAINTS/CONCERNS ARE NOT DIRECTED AT THE SBA'S MINORITY BUSINESS ENTERPRISE PROGRAMS, HOWEVER, THEY ADDRESS THE LESS THAN EFFECTIVE MANNER IN WHICH THE DELIVERY OF SERVICES IS PROVIDED. WE HOPE THAT H.R. 836 SERVES AS A CATALYST IN RESTORING PROPER AUTHORITY TO THE OFFICE OF THE ASSOCIATE ADMINISTRATOR AND ASSISTS THE SBA IN CARRYING OUT ITS LEGISLATIVE RESPONSIBILITIES DIRECTLY RELATING TO THE SMALL BUSINESS COMMUNITY.

H.R. 836 ADDRESSES THREE MAIN ISSUES. I STATE ONCE AGAIN, THAT OUR ASSOCIATION IS IN FULL SUPPORT OF THIS PROPOSED LEGISLATION AND WOULD LIKE TO MAKE ITS COMMENTS AND RECOMMENDATIONS IN THE FOLLOWING AREAS:

A) <u>CRITERIA FOR GRADUATION/TERMINATION</u>

OUR ASSOCIATION IS IN FULL SUPPORT OF ALL OF THE PROVISIONS SET FORTH IN SECTION 2 OF H.R. 863. THE LANGUAGE:

- SOLELY OF GOOD CAUSE

- FAILURE TO MAKE ADEQUATE PROGRESS TOWARD ACHIEVING COMPETIVENESS, AND
- TERMINATION, BASED ON GOOD CAUSE,

ARE IMPORTANT FACTORS IN AN ATTEMPT TO PROVIDE U.S. SMALL BUSINESS ADMINISTRATION WITH ADDITIONAL OBJECTIVE LEGISLATION TO EFFECTIVELY IMPLEMENT ADMINISTRATIVE RESPONSIBILITIES.

WHILE WE DO RECOGNIZE AND UNDERSTAND THE NEED FOR FPPT, WE STRONGLY RECOMMEND THAT THE FOLLOWING FACTORS RECEIVE DUE CONSIDERATION IN ANY TYPE OF TIME RESTRICTION LIMITING PARTICIPATION IN THE 8(a) PROGRAM.

1. COMPANIES' CAPITAL BASE AND ACCESS TO CAPITAL (PRE AND POST 8(a) CERTIFICATION;)
2. ACTUAL RATE OF GROWTH VS. PROJECTED BUSINESS PLAN (SALES, ASSETS, FAIR MARKET VALUE, NET WORTH AS WELL AS PRIVATE SECTOR VS. GOVERNMENT CONTRACTS);
3. FINANCIAL MANAGEMENT INTERESTS AND/OR INVOLVEMENT IN OTHER BUSINESS VENTURES (SUCH AS SUBSIDIARIES SPIN-OFFS, INVESTMENT GROWTH, ETC.);
4. USE OF SBA TECHNICAL ASSISTANCE RESOURCES (SUCH AS 7(j) PROGRAM);
5. COMPANIES' BONDING CAPACITY (PRE AND POST 8(a) CERTIFICATION) AND
6. THE PERSON'S INDIVIDUAL WORTH (PRE AND POST 8(a) CERTIFICATION).

MAXIMUM TIME PERIOD AND ONE TIME EXTENSION

A FIVE YEAR MAXIMUM, FPPT FOR CONSTRUCTION CONTRACTORS, IS VERY UNREALISTIC DUE TO :

1. THE LENGTH OF TIME NEEDED TO COMPLETE A MAJOR CONSTRUCTION PROJECT EXCEEDS THE FPPT LIMIT;
2. CRITICAL PATH MANAGEMENT (C.P.M.) OF GENERAL CONTRACTORS VS. SUB-CONTRACTORS AND SPECIALTY CONTRACTORS; AND,

3. THE TYPE OF TIME FRAME PROPOSED IS NOT COMPATIBLE WITH THE NATURE OF THE CONSTRUCTION INDUSTRY.

4. RE-NEWAL SHOULD NOT BE A ONE TIME EXTENSION, BUT A CONTINUANCE BASED ON CONTROLLED CRITERIA FACTORS.

AFTER CRITERIA, CONTROLS AND EVALUATION POINTS HAVE BEEN WELL DEFINED, THEN AN OBJECTIVE GRADING SYSTEM, ASSESSING BUSINESS DEVELOPMENT NEEDS, CAN BE APPLIED TO DETERMINE A CLIENT'S FPPT. TO ASSURE MAXIMUM OBJECTIVITY, IF A CLIENT GRADES OUT AS A BORDERLINE CASE, HIS COMPANY CAN BE PUT INTO A SPECIAL CATEGORY, SPECIFYING, THAT THE CLIENT REQUIRES ADDITIONAL EVALUATION.

B) SIZE STANDARD FOR 8(a) FIRMS:

8(a) FIRMS SHOULD NOT AND DO NOT HAVE TO BE PART OF THE ADMINISTRATIVE PROCEDURES ACT (APA) REGARDING SIZE STANDARDS. THE SBA SIZE STANDARDS ARE A VOLUNTEER ADMINISTRATIVE ARRANGEMENT MADE BY THE SMALL BUSINESS ADMINISTRATION -

1. EXCLUDE ALL 8(a) RECEIPTS, OR A PORTION THEREOF, FROM ALL SIZE STANDARDS DETERMINATION, AND

2. IN NO INSTANCE SHOULD MORE THAN 25% OF 8(a) RECEIPTS BE INCLUDED IN THE SIZE STANDARDS DETERMINATION.

C) DUE PROCESS GUARANTEE FOR 8(a) FIRMS:

IT IS IMPORTANT THAT EVERY 8(a) FIRM RECEIVE DUE PROCESS BEFORE BEING TERMINATED/GRADUATED FROM THE PROGRAM. THIS DUE PROCESS SHOULD INCLUDE:

1. THE NOTIFICATION OF ALL RIGHTS UNDER THE DUE PROCESS BE RECEIVED BY COMPANY'S IN ADVANCE OF THE TERMINATION/GRADUATION DATE, AND

2. THE U.S. SMALL BUSINESS ADMINISTRATION MUST EXECUTE ALL REGULATORY RESPONSIBILITIES RELATING TO DUE PROCESS WITHIN A SPECIFIED TIME FRAME.

SUMMARY

THE PROGRAMS AND REGULATIONS THAT WILL BE PUT INTO PLACE TO CARRY OUT THE INTENT OF H.R. 863 CAN ONLY EFFECTIVELY EXIST IN A HEALTHY SMALL BUSINESS ADMINISTRATION ENVIRONMENT:

... ONE WITHOUT HOSTILITY,

... ONE WITHOUT THREAT OF BUSINESS REPRISALS,

... ONE WITH OPEN PROGRAM COMMUNICATIONS,

... ONE WITH TIMELY DISTRIBUTION OF NECESSARY PROGRAM DATA OR INFORMATION, AND

... ONE WITH THE INCENTIVE FOR SBA PERSONNEL TO SATISFACTORILY CARRY OUT THE PROGRAM TASKS THEY HAVE BEEN EMPOWERED TO ADMINISTRATE.

THE INTENT OF THE PROGRAMS IN QUESTION ARE LEGISLATIVELY CLEAR. THE MANDATE TO THE U.S. SMALL BUSINESS ADMINISTRATION TO IMPROVE THE DELIVERY OF SERVICES HAS COME BOTH FROM THE EXECUTIVE AND LEGISLATIVE BRANCHES OF GOVERNMENT. THIS CHALLENGE AND/OR RESPONSIBILITY IS NOW IN THE HANDS OF THE ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION. BUSINESSMEN AND TRADE ORGANIZATIONS WILL BE CAREFULLY ASSESSING HIS PERFORMANCE ON BEHALF OF THE ENTIRE BUSINESS COMMUNITY AND CERTAINLY INVITE THE U.S. SMALL BUSINESS ADMINISTRATION TO UTILIZE THE RESOURCES AVAILABLE WITHIN NAMC.

ATTACHMENT - EXHIBIT A

PAYNE CONSTRUCTION CO., INC.
TURNER BLDG., 145 WEST MAIN STREET BEDFORD, VIRGINIA 24523
- (703) 586-4669 -
GENERAL CONTRACTORS CONSULTANTS

March 25, 1983

National Assoc. of Minority Contractors
Mr. Dewey Thomas
318 Massachusetts Avenue, N.E.
Capitol Hill
Washington, D.C. 20002

Dear Mr. Thomas:

Your help in setting up an appointment for my people to speak with Mr. Blalock was greatly appreciated. Mr. Blalock seems to be a person genuinely interested in the problem that I brought before him. There was not to much help he could give unless the Small Business Administration from Richmond appealed the case, and that is unlikely to happen.

There was so many areas in the Small Business Administration that still need confronting by our organization because the practice that now exists in the negotiating process is designed to hold the minority contractor to a point of no advancement.

At some point in time I am sure you have some plans to address this issue.

Again, many thanks for your support and efforts.

Respectfully,

James C. Payne S/S

James C. Payne
President

vlf

Mr. THOMAS. Under Public Law 96-481, the Associate Administrator's responsibilities were diluted greatly. We feel that this has had a detrimental effect on the entire program.

We are hoping that the new proposed legislation, H.R. 863, will be a catalyst to restore some of the authority back to the Associate Administrator to run the program more effectively.

As we get complaints, and as late as yesterday, I got a complaint in reference to the whole program, and the contractor at this time actually put it on tape. I have not had a chance to listen to the tape yet, but it appears that it is getting worse and worse out in the marketplace of dealing with the Small Business Administration, and again, the complaints are never about the text of the program, but the complaints are about the administration and the implementation of the program.

I have one letter I would like to read that I made a part of the exhibit or the statement that we are presenting.

This is from Payne Construction Co., in Virginia, addressed to our association.

> Your help in setting up an appointment for my people to speak with Mr. Blalock was of great appreciation. Mr. Blalock seems to be a person genuinely interested in the problems brought before him. There is not much help he can give to us unless the Small Business Administration from Richmond appeals the case, and that is unlikely to happen.
>
> There were so many areas in the Small Business Administration that still needs confronting by our organization because of the practices now exist in the negotiation process is designed to hold minority contractors, to a point of no advancement.
>
> Some time, at some point in time I am sure that you will have some plans to address these issues.

This is just one of several letters that we receive on a weekly basis, and it appears to cut across the complete gamut of the Small Business Administration. It is never no one office. It seems to be just an overall attitude that there is nothing coming into the capital program, and there is actually nothing going out.

We are now beginning to get letters where contractors are actually being told that there is no contract support from them, and that seems to be contradictory from the information that we get across our desk in reference to the different set-asides that the major agencies are putting forth.

We had two contractors out of the San Francisco area yesterday be actually told, and also in writing, that there is no contract support for them.

Now, in their plan, they have submitted their business plan to become competitive. In no way, shape, or form, have they been able to have a contract within the last year and a half, an 8(a) contract even if they have been doing some of their own self-marketing.

So, again, it seems like the plan is put in the package. The plan means something at the time, that it is put forth, but once it is put forth, there is no action whatsoever on the plan.

So far as criteria, graduation, and termination, we feel that there is some very good language in your legislation and we feel that this type of language that was in the legislation in some way, shape or form—and I don't know how we legislate administrative, I just haven't been able to come up with that yet—but it appears to me that a lot of the language in there is again dealing with the administration, and that if the administration, no matter what kind of

legislation we do pass, if the administration that is empowered to carry out these programs, does not go about it in a way that it should go about it, that no matter, again, what legislation we have it is not going to be effective.

The construction industry is a little different than the manufacturing, and also the retail. So, when we start talking about graduation, we had to take into consideration many things relating to the construction industry.

We had to take into consideration that a lot of jobs are done on what is called the CPN, and the subcontractor, the general contractor, and the specialty contractor, times differ greatly in order to get into the job, and start moving.

So, therefore, when a graduation date is fixed on someone, this has to be taken to very, very careful consideration, that the nature of the construction industry, the long term of a project, may have a very, very detrimental effect, if any way this is not taken into consideration when these fixed times are set.

The other thing is that in the month of March, we had five of our members who were supposed to graduate in the month of March.

As of this date, they have not exercised their appeal rights. They got everything on time, and——

Mr. MITCHELL. You say they have not exercised their appeal rights?

Mr. THOMAS. No, but they have.

Mr. MITCHELL. They have.

Mr. THOMAS. In other words, they did all the necessary paperwork, but again, they have not gotten any reply to date from the Small Business Administration of what the status it is.

The whole contract is in limbo like that. We think it does not lend to good business practices.

We have one contractor from Seattle who had a $2.5 million job pending, trying to negotiate in good faith with the Corps of Engineers, and he was constantly running into stumbles because the contracting officer kept asking, "When is your graduation date? Your graduation date has passed. How can I continue to negotiate with you in good faith if your graduation date has passed?"

I did hear that there are letters that have gone out within the last 2 weeks to contractors saying that they are still on the program until some disposition has been made. But again it is very, very hard to negotiate with that type of letter, because no one knows how much time you are going to receive, or how much time you are not going to receive.

So, I think that is something that really needs the attention, and hoping that this bill can draw the attention on that.

As relates to size standards, we feel very strong, the same way as the legislation is proposed, that no receipts coming from 8(a) should be included in the size standards.

We feel that 8(a) receipts are development receipts. They are somewhat artificial. That is why we are here because they are artificial, and they should not be counted in the overall gross sales of a company.

And we know in the construction industry that the business falls over approximately anywhere from 50 to 75 percent, and then they

just left with the balance of the 25 percent of commercial work that they may be doing, and then another 25 percent perhaps if they are negotiating stuff as small business and not under the DSBA program.

So, we feel very strong that no receipts, and that if any compromise position, we would say would be 25 percent, of the gross receipts of 8(a) could be included; but we feel that it would be detrimental to the overall growth of any company to become competitive if the total gross receipts of 8(a) is included.

For some reason SBA has elected to, in the size standard, under the Administrative Procedure Act to include the 8(a) companies. We feel that that is not mandatory, that that should be excluded, that they can say, "No, they do not come under this act, and so therefore the size standards can be altered."

In reference to due process, I think that the example that I gave prior in reference to due process is a good example of how flip this whole graduation procedure is being handled on an administrative level by the Small Business Administration, and we feel that if this kind of thing continues as relates to a person's rights and due process, if this kind of attitude prevails, that we are going to have a lot of companies going down the drain and many who are realizing that they are going to go down the drain.

All they want to get is a fair shake. They want to know when they should be heard from by the Small Business Administration and that that be done in a timely, businesslike manner.

Again, I would like to point out that we are in full support of the intent of H.R. 863, and that this can only be carried out effectively if it is done without hostility by the Small Business Administration; if it is done without any kind of reprisal business threat which we see exists, if we have open communications with the Small Business Administration; and if they, in some way, shape or form would see that timely information is distributed back to the people and the contractors that are in the program, that they can make the kind of necessary business decisions, that are necessary to promote their company.

Again, we would like to point out that competitiveness, the reason why we are here is because we cannot be competitive out in the public market. Yet a contractor that bids on jobs the other day, anywhere from $50,000 to $70,000—that is his maximum bonding capacity; now the big boys, the George Hymans, the Turners, all of them are beginning to bid on jobs which are considered too small for them years ago.

In order for us to become competitive, the competition has become so much keener, and the need for a good revolving, a good SBA program in the capital section is of the utmost necessary to contractors.

We have five or six contractors who are good dues-paying contractors with our association that have gone out of business over the past 2 years, OK, and they can attribute part of that reason in going out of business that they were depending on certain things as relates to the SBA, when they went out and did self-marketing, they were discouraged about doing self-marketing, and they just did not know how to communicate on a local level with the Small Business Administration.

When the contractors put in a business plan, and say that they are going to do $2 million over the next 2 or 3 years, within their business plan, they sort of look forward to that.

If it is not an aggressive and sophisticated contractor to know that he has got to make that happen, there is no kind of real positive communication coming back from the Small Business Administration, so they know exactly where they are at any given time.

So there have been those five contractors, and I would like to submit their names to you when I get back to my office, about how they feel that the program because it was improperly administrated, and that the full administration has caused them to anticipate certain support from the Small Business Administration and because nothing is reviewed on an annual basis as relates to their portfolio, that they have actually gone down the drain and are no longer in business.

So, again, I would like to say that we are in full support of this new proposed legislation. We hope that this legislation is a catalyst to improve the overall administration and the implementation of services under this program by the Small Business Administration.

Thank you, Mr. Chairman.

Mr. MITCHELL. Thank you. I would like to get the names of those five companies for the record.

Also, what I propose is to take testimony from the entire panel, and then raise some questions. Mr. Denlinger, you are next to testify.

Mr. DENLINGER. Yes, sir. Thank you.

TESTIMONY OF STEPHEN W. DENLINGER, PRESIDENT, LATIN AMERICAN MANUFACTURERS ASSOCIATION

Mr. DENLINGER. Congressman Mitchell, I appreciate this opportunity to share with you some of our views on the matter of graduation from the 8(a) program, and our views in support of H.R. 863.

My name is Steve Denlinger. I am the president of LAMA, the Latin American Manufacturers Association, a national trade association representing over 500 Hispanic manufacturing and high technology firms throughout the United States.

Parts, components, and assemblies that our companies manufacture are involved in the Moon shot, space shuttle, AWACS, Navy destroyers, the F-16, the F-104 fighter, the L-1011 Tristar, the B-52 bomber, armored personnel carriers, the M-1 tank, nuclear powerplants. Sidewinder missiles, Stinger missiles, et cetera.

I have attached a list of some of the products which you would be delighted that I am not going to read this morning.

But I have brought here for display today samples of military hardware produced by some of LAMA's manufacturing firms.

The first items on the left are the key components for the suspension system for the M-113 armored personnel carrier; high precision parts built by Welbilt Electronic Die Corp., of the South Bronx for the U.S. Army Tank/Automotive Command.

The second item which is in that long gray metal fabricated box over there is the Stinger missile field training unit, manufactured by Arral Industries for Redstone Arsenal. That is a shoulder-car-

ried ground-air missile which is replacing the Red Eye in the military system.

These two companies have an outstanding record of technical performance on defense hardware manufactured to rigorous military specifications, and the SBA 8(a) program was the key to their securing these types of contracts.

Both companies were small machine shops prior to their entry into the 8(a) program and they had never secured work directly from the Government prior to becoming 8(a) certified.

As I prepared for this hearing over the past month, I couldn't put out of my mind the events of the recent past wherein SBA's proposed rules implementing Public Law 96-481 would have resulted in the decimation of the 8(a) program.

For the record, I have attached a copy of my letter to President Reagan setting forth the extraordinarily deleterious impact of the proposed rules on the 8(a) program. That is at the end of my testimony.

Our primary concerns with the current graduation scheme are essentially as follows:

First, the present maximum FPPT of 5 years is too short a period with respect to achieving competitive viability;

Second, SBA never developed an analytical base for its approach to graduation and the time it takes to achieve competitive viability;

Third, there is still no provision for phased withdrawal from the 8(a) program;

Fourth, the current numerical assessment is fairly rigid, and the 8(a) terms are not really negotiated as intended under Public Law 96-481;

Fifth, graduation is based on a series of factors evaluated at the entry point into the 8(a) program, and not on each firm's progress toward competitive viability during the program;

And last, since graduation occurs at a specified point in time, regardless of the extent to which competitive viability is achieved, there is no incentive for SBA staff to work assiduously to assist 8(a) firms in achieving competitiveness.

Aside from the FPPT system itself, there are other contributing factors which interact with the graduation policies to further impact adversely on 8(a) firms' progress to competitive viability:

First, the primary ones on page 7 are that historically, SBA has been unable to provide its portfolio firms with a meaningful sustained flow of requirements;

Second, there is a pronounced pattern of low contract support in the first 2 to 3 years of most 8(a) firms' experience in the 8(a) program;

Third, there is a significant lack of marketing sophistication on the part of 8(a) firms;

Fourth, the situation is compounded in the high tech areas wherein the marketing/contracting/production cycles are often extensive;

Next, SBA has little awareness as to the importance of team-building in the development of 8(a) firms' top management;

And, last, SBA does not provide an executive level training program for portfolio participants.

Mr. Chairman, we want to express our appreciation for your resurrection of the notice of competitive viability through H.R. 863.

For the past 2 years, the idea that the 8(a) program should promote competitive viability seems to have virtually disappeared.

From all the foregoing material with respect to competitive viability which I cited in my testimony but I have not read, it is clear that the statutory essence of the 8(a) program is to promote competitive viability for program participants.

SBA's approach to graduation contains a serious flaw which is not in keeping with the intent of Congress. The flaw is that it lacks an analytical base for the 5-year approach.

At the May 21, 1982 hearing, Congressman, you asked SBA Administrator Cardenas to cite the analytical data underpinning his 3- to 5-year proposal. I'm looking at page 13.

The Administrator responded that the proposal was based on "common business sense." While common business sense may have served Mr. Cardenas well in the conduct of his own accounting firm, this is clearly an insufficient analytical framework for implementing the Federal Government's primary program designed to bring a minority business community into the mainstream of our economic system.

The main point in all of this is that the SBA is still not in consonance with the intent of Congress in the establishment of a data base to justify the graduation proposals.

Despite the few minor corrections to the proposed final rule, we still have a graduation program that is based almost in toto on the former Administrator's notion of "common business sense." The program still lacks the proper analytical base.

In addition, SBA's rule is inflexible and contrary to many of the specific provisions of the Senate Report 96-974, which speaks at length to the need for flexibility and consideration of 8(a) companies on a case-by-case basis.

Despite this overwhelming stress by the committee on flexibility and a case-by-case assessment, SBA has established a restrictive participation term which applies arbitrarily across the board without regard for the individual characteristics of each company.

On page 16, our assessment is that the FPPT terms are too short for purposes of achieving competitive viability particularly in manufacturing and high technology areas.

The first problem has to do with access to contracts, and the record clearly shows that SBA does a relatively poor job in assisting firms in identifying contracts.

Were it not for self-marketing, most 8(a) firms would never receive contracts. Some 600 firms received no contract support in fiscal year 1981. With the exception of the small percentage of firms receiving the bulk of the contract support, most of the remaining firms in the portfolio received inadequate contract support throughout their term in the program.

Another area of concern is the prevailing lack of support, particularly in the beginning phases of the 8(a) program.

This pattern of low-level contract support in the first 3 years clearly demonstrates that at least half of the 8(a) experience contributes very little to a company's competitive viability.

There is a lack of marketing capacity. Most firms come into the program having very few skills with respect to marketing their capability particularly in the defense establishment.

There is the issue on page 19 of the total lack of training support for program participants, despite the availability of $10 million through the 7(j) fund, SBA has no executive development program for 8(a) participants.

There is no sequence of course work or seminars through which each participant must pass covering critical areas of marketing, management, and finance which are so vital to the progress of 8(a) firms in moving toward competitive viability.

In another area—in the manufacturing area, all of the factors discussed above are greatly magnified due to the high technologies involved, the mil specs to which the 8(a) firms must conform; the plant reviews and approvals which must be secured; long lead time items which are normal for manufactured components, and the time required to secure first article approval.

The typical manufacturing firm will need meaningful contracts from at least six to eight military installations in order to effectively learn the defense procurement system and become an accepted producer and to become prepared to compete in the high technology manufacturing arena.

And there is the issue on page 23 of the team-building process. Most companies come into the program having a low level of sales; no full-time marketing or engineering staff; the owner is chief cook and bottlewasher, unsophisticated; the accounting system, their QC system is not approved to mil spec 45208A or 9858, and they have very, very undeveloped financial relationships.

The typical manufacturing firm will need to reach sales of around $1 million before bringing on a production foreman and a marketing person.

For sales from $2 to $5 million, contract financing becomes increasingly important, and the owner will spend more time developing banking relationships.

At sales of $5 million and over, the business begins to have a complement of core managers in marketing, finance, engineering, production, and quality control.

Nothing in SBA's approach to graduation to date suggests an awareness of this critical team-building process, nor is team building factored for in the numerical ratings system based upon FPPT's are established.

On page 25, there is the issue of phased graduation. In our estimation, one of the most onerous and unbusinesslike facets of the current graduation system is the failure to provide for phased graduation. Graduating firms are simply cut off from contracts from one day to the next, regardless of the impact on competitive viability.

Instantaneous graduation will normally impact every area of a company's existence, including:

One, instant and often dramatic drop in sales;

Two, reduction and production, managerial, and engineering staff—with disastrous impact on the teambuilding process—just discussed;

Three, adverse impact on equipment and facility leases;

Four, adverse impact on long-term loans and relationships with financial institutions.

In the overall, our conclusion is that the current FPPT system is not oriented toward competitive viability, Congressman. The system is too rigid, too short, has no analytical base, and contains no provision for phased graduation, has no numerical criteria for measuring each participant's progress during the program, and is generally out of consonance with congressional intent.

Added to the shortcomings of the FPPT system are the facts that SBA provides inadequate marketing and contract support, and inadequate training to 8(a) companies during their tenure in the program.

Recommendation No. 1. We urge the committee to cause SBA to undertake a definitive study to answer the question: How long should minority firms need SBA assistance in order to achieve competitive viability?

Recommendation No. 2. You have an instantaneous graduation, is a highly undesirable feature in the current system.

As you can see by the chart on page 27, it is a cliff; there is no such—it is just not phases; it makes no sense at all. You are simply pushed off the cliff.

We believe that every company in the program should be eligible for a period of phased withdrawal at the end of its 8(a) term in the event that the first has been unsuccessful in negotiating multiyear contracts which would continue postgraduation.

We recommend that phased withdrawal take place over a 4-year period at an average reduction in 8(a) contract support of 20 percent per year, from the highest level of 8(a) support received by the first.

Those 8(a) firms fortunate enough to have negotiated multiyear contracts near their graduation point could opt not to participate in the 4-year withdrawal scheme.

Recommendation No. 3. While this bill is being considered, Mr. Congressman, and while we still have the current FPPT system in place, we would like to recommend a change:

First, we recommend that the additional fixed term should be 5 years for all 8(a) firms.

Second, that extensions should be given in 2-year increments ranging from 2 to 6 years according to the technical complexity of each industry.

Third, that all firms should have a 4-year withdrawal phase upon completion of the initial fixed term plus extensions.

Under our proposed system, extensions before the initial 5-year term would be granted upon each firm's successful completion of numerical goals set forth in the business plan for management, marketing, and finance, as well as the demonstrated need for additional 8(a) contract support for moving toward competitive viability.

This is very much in keeping with the numerical rating system in the proposed legislation.

I have a number of charts in my testimony relating to the issue of the cycle that 8(a) companies ought to be going through with respect to where they begin, how much support they should perceive, and how that support should taper off over a period of years.

That system fits very well into your proposed graduation scheme.

Recommendation No. 4. On page 33, marketing and requirements support.

The 8(a) program has placed $8 billion in contract awards over the past decade. The figure may reach $15 billion in the next 3 fiscal years or so.

The 8(a) program has become serious business; yet the irony remains that SBA is still ineffective in identifying requirements for firms in the portfolio, and the bulk of the requirements continue to flow to a small percentage of 8(a) firms which have developed highly refined self-marketing skills.

While 8(a) companies must themselves make steady progress in meeting their business plan goals, so must the SBA keep its side of the bargain. SBA's side of the bargain is to provide its companies with the requirements essential to their development.

Graduation should not occur unless SBA can keep its side of the bargain. Therefore, SBA must radically improve its ability to identify and deliver requirements to its portfolio companies, and in this vein recommend that the Congress allocate $5 million for the placement of 50 MBE/PCR's—procurement center representatives—at key procurement locations throughout the Federal Government.

The sole function of these MBE/PCR's be the identification of requirements which may be suitable for the 8(a) program.

In addition, SBA must be given additional authority by the Congress in designating 9(a) set-asides. SBA must be given the authority to designate set-asides subject only to incontrovertible proof by the buying agency of a technical inability by the 8(a) firm to perform the requirement.

Two important precedents for this increased authority are the set-aside programs for the prison industries, the blind, and severely handicapped.

It is essential that SBA take hold of the reins of the flow of requirements in order to make the 8(a) program work. Otherwise, the program will not fulfill its promise, and hundreds of companies will simply be cycled through the program like a revolving door with the majority of them having little prospect of achieving competitive viability.

The final recommendation, executive development program.

In addition to providing portfolio companies with a reasonable level of contract support, SBA's side of the bargain also includes the development and implementation of a highly professional sequence of courses designed to insure that the owners and top managers of portfolio companies develop first-class executive skills in marketing, management, and finance.

SBA should not graduate any firm for which it has not offered at reasonable times and places, comprehensive training in management, marketing, and finance.

For the design of this executive development program, SBA should reach out to the Nation's foremost business schools and business management companies, and consult with the advanced 8(a) companies whose areas of expertise clearly deal in these areas.

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The following outline is a rough guide as to which areas should be covered in an executive development program during each participant's 5-year term.

Under marketing, we are talking about strategic market planning, company image development, capability presentation, Government contracting, proposals, costing, and so forth.

Under management, we are talking about management structures, the DAR's and the FAR's, contract negotiations, project management, personnel operations, and so forth.

Under finance, we are talking about the financial statements, financial planning, Government cost accounting, so critical; indirect cost rates, automation of financial controls, reporting and contract closeout, banking relationships, equity debt, and contract financing.

While this list is certainly not exhaustive, it clearly sets forth some of the key areas which are critical in an executive training area.

The key idea is that SBA needs to assume a central and vigorous role in insuring that all 8(a) companies receive top-flight executive training as part of SBA's responsibility in fostering competitive viability of its portfolio companies.

As part of its side of the bargain, SBA must not graduate any firm which has not been exposed to or offered such an executive development program.

Congressman, thank you for your interest in our views and an opportunity to appear before you, sir.

Mr. MITCHELL. Thank you. It is very clear that a great deal of study and work went into preparing this statement; it is a very exhaustive statement, and a very significant one.

Thank you.

Mr. DENLINGER. Thank you.

[Mr. Denlinger's prepared statement with attachments follows:]

Prepared Statement of Stephen W. Denlinger, President, Latin American Manufacturers Association

Congressman Mitchell and distinguished members of the House Committee on Small Business - I appreciate this opportunity to share with you LAMA's views regarding HR-863 and the issue of graduation from the 8(a) program.

BACKGROUND ON LAMA

My name is Stephen Denlinger. I am the President of LAMA -- The Latin American Manufacturers Association. LAMA is a national trade association representing over 500 Hispanic manufacturing and high technology firms throughout the United States. Technologies in our membership include: castings, sheet metal fabrication, forgings, precision metal fabrication, stampings, metal coatings and finishing, plastics, chemicals, electronics, telecommunications, computer sciences and so forth.

Parts, components, and assemblies that our companies manufacture are in the moon shot, space shuttle, AWACS, Navy destroyers, the F-16, the F-104 fighter, the L-1011 Tristar, the B-52 bomber, armored personnel carriers, the M-1 tank, nuclear power plants, sidewinder missiles, stinger missiles, etc. For your review, the following are a sample of the products and technical services of some of our members:

- Air filters—military helicopter
- Insert dials—trident missile
- Motor control centers
- Battery chargers
- Electronic power supplies
- Shrike missile cables
- Spiral bevel gears
- Sidewinder missile fins
- Smoke projectile—155 M

- Practice bombs & tow targets
- Radar domes for Navy ships
- Multi-layered PCB assemblies
- Desk-top computer
- Engine oil strainer—Army tank
- Electrical generator sets to 500KVA
- Air duct segments—J-79 jet engine
- Brake shoes—rail cars (AAR Specs)
- Secure telephone sets—Navy
- Radar avionics chassis
- Digital switching power supplies
- Magnetic particle & x-ray testing
- Hydraulic ground support equipment
- Engine mounts—L1011 Tristar
- Bombay door webs—B-52
- Precision tube assemblies—C-141
- Submersible motor controls
- Coolant flow detectors—tow missile
- Snowplows
- Desecant systems—space shuttle
- Army tank sighting devices
- Suspension kits—M-113 APC
- Fuel cell plates—space shuttle
- Nuclear waste containers
- Awacs structural supports
- Stinger surface-to-air missile trainer
- Computer interfaced access control security systems
- Heat exchange cooling kits—armored personnel carriers
- Analog data signal processor cold plate chassis
- Aluminum control activator housings—tolerances to .0005
- Complex aluminum electronic receiver chassis
- High frequency communications equipment
- Hydromechanical transmission housings
- Fed-thrus caps, ferrules & tubes—nuclear power cells
- Sidewinder missile aircraft attachment brackets
- Precision optics—cameras and satellites
- Transformers—single & three phase ferroresonant & linear
- Precision gears—Mark 48 torpedo—M-60 & M-1 Tanks
- Waveguides, microwave components & ferrite devices
- Conveyors and material handling equipment
- Custom enclosures for computers & communications equipment
- Internal spur gear housing (5,000 pound castings)
- Heat converter & exchanger—nuclear power plant
- Bell crank—internal moving part for F-104 jet engine
- Control panels for pipelines and wastewater systems
- Plastic injection molded automotive & aircraft parts
- Flame cutting, leveling & welding—9,000 pound fabrications
- Cast aluminum medical & aerospace components
- Safety control panels—nuclear power rod select—NRC Specs
- Thermocouples, thermowells and related temperature devices
- Computer interfaced telephone interconnect systems
- Titanium forgings—aircraft & missile applications
- Computer based nuclear re-entry body vulnerability analysis
- Carbon steel forgings for pneumatic applications
- Precision machining of supersonic aircraft wing spars
- Multiplexers for computer interface applications
- Design and manufacture carbide saw blades
- Pressure relief valve—109 Howitzer
- Electrical switchgear to 35,000 volts

I have on display here today samples of military hardware produced by two of LAMA's 8(a) manufacturing firms as follows:

1. Welbilt Electronic Die Corporation of the South Bronx - major components for the suspension system of the M-113 Armored Personnel Carrier - U.S. Army Tank/Automotive Command.
2. Arral Industries of Ontario, Calif. - The Stinger Missile field training unit - Redstone Arsenal.

These two 8(a) companies have an outstanding record of technical performance on Defense hardware manufactured to rigorous military specifications. The SBA 8(a) program was the key to their securing these types of contracts. Both companies were small machine shops prior to their entry into the 8(a) program and had never secured work directly from the government.

PROPOSED GRADUATION RULES

As I prepared for this hearing over the past month, I could not put out of my mind the events of the recent past wherein SBA's proposed rules implementing P.L. 96-481 would have resulted in the decimation of the 8(a) program. These policies would have resulted in the graduation of almost half of the entire 8(a) portfolio in the first year. The idea of progress toward competitive viability was jettisoned en toto. These polcies would have limited 8(a) participation to 3 to 5 years, regardless of

progress toward competitive viability, and regardless whether 8(a) firms had received contract support. These policies were punitive in nature, and I cannot overlook the pervasive negative attitude toward the 8(a) program which existed under the previous Administrator.

For the record, I have attached a copy of my letter to President Reagan setting forth the extraordinarily deleterious impact of the proposed rules on the 8(a) program. The ensuing fight with SBA, through our contacts on the Hill and in the White House, can only have been witnessed to be believed. Rarely have we been faced with such intransigence in the face of so obviously flawed regulations. While we do not want to dwell on the past, it is important to recall this difficult period as we assess HR-863 and the 8(a) program's prospects for the future.

Gentlemen - I would like to think we won a great victory. We did not. The changes in the proposed graduation rule were limited, and were essentially as follows:

1. All firms would be elegible for five years, instead of 3 years for professional service firms and 5 years for all others;
2. Instead of a maximum of 1 year extension, a maximum extension of two years was approved;

3. Instead of the clock starting to run from the date of certification, we were able to change the policy so that the clock starts to run from the date of the award of the first 8(a) contract.

These seemed like great victories at the time - and they were, in the face of the punitive climate which existed during that period.

IMPROVED ENVIRONMENT

I am pleased to report that the situation has changed dramatically with the appointment of James Sanders as SBA Administrator, and Heriberto Herrera as Deputy Administrator. These two senior executives are gentlemen, competent managers, and sympathetic to the goals of the 8(a) program. It has been my distinct pleasure to have worked with them over the past several months. While the atmosphere is greatly improved, however, we must recognize that we are still faced with a graduation system which is flawed, unresponsive to Congressional intent, and divorced from the notion of competitive viability.

MAJOR CONCERNS WITH FPPT

Our primary concerns with the current graduation scheme are as follows:

1. The present maximum FPPT of 5 years is too short a period with respect to achieving competitive viability;
2. SBA never developed an analytical basis for its approach to graduation and the time it takes to achieve competitive viability;

3. There is still no provision for phased withdrawal from the 8(a) program;

4. The current numerical assessment is fairly rigid, and the 8(a) terms are not really negotiated as intended under PL 96-481;

5. Graduation is based on a series of factors evaluated at the entry point into the 8(a) program, and not on each firm's progress toward competitive viability during the 8(a) program;

6. No criteria exists by which progress toward competitive viability is measured during each firm's term in 8(a) program, and as a consequence, 8(a) firms are graduated regardless of the extent to which they achieve competitive viability;

7. Since graduation occurs at a specified point in time, regardless of the extent of progress toward competitive viability, there is no incentive for SBA staff to work hard to assist 8(a) firms in achieving competitiveness.

There are other major areas of concern which interact with the graduation policies to further impact adversely on 8(a) firms' progress to competitive viability. The primary ones are as follows:

1. Historically, SBA has been unable to provide its portfolio firms with a meaningful flow of requirements;
2. There is a pronounced pattern of low contract support in the first two to three years of most 8(a) firm's experience in the 8(a) program;
3. There is a significant lack of marketing sophistication on the part of 8(a) firms;
4. The situation is compounded for firms in the high tech area wherein the marketing/contracting/production cycles can be extensive;
5. SBA has little awareness as to the importance of team-building in the development of 8(a) firm's top management;
6. SBA does not provide an executive level training program for portfolio participants.

COMPETITIVE VIABILITY RESURRECTED

Thank you, Mr. Chairman and members of the House Small Committee on Small Business, for resurrecting the notion of competitive viability through HR-863. For the past two years, the idea that the 8(a) program should promote competitive viability virtually disappeared.

The comments set forth in this position paper regarding SBA's 5 year graduation policy may best be understood within the context of the goals and/or purposes of the 8(a) program. The Small Business Act, as amended by PL 95-507, established the purposes of the 8(a) program as follows:

> "(A) foster business ownership by individuals who are both socially and economically disadvantaged;
>
> "(B) promote the competitive viability of such firms by providing such available contract, financial, technical, and management assistance as may be necessary; and
>
> "(C) clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals." (Underscoring added)

Public Law 96-481, which further amended the Small Business Act, stipulates that:

> "The Program shall assist small business firms participating in the Program to develop comprehensive business plans with specific business targers, objectives, and goals for correcting the impairment of such concern's ability to compete..." (Underscoring added)

As part of the Legislative History regarding PL 95-507, the Senate Committee Report No. 96-974 (96th Congress, 2nd Session, page 3) stated, in relation to 8(a) procurement support, that:

> "...it is equally important that these contracts be a means of fostering competitive viability for these firms and not an end in themselves." (Underscoring added)

The same Committee Report (page 18), in reviewing the background to 8(a) program completion, stated that:

> "Clearly established in existing law, and the legislative history of Public Law 95-507, is the utilization of the Small Business Administration's 7(j) and 8(a) minority business development programs as a means to promote the competitive viability of minority business. Competitive viability is also used in SBA's determinations of economic disadvantage as an eligibility qualification for a minority business concern pursuant to section 8(a) (6) of the Small Business Act." (Underscoring added)

The Committee further indicates (page 23) that the 8(a) firms' business plan are designed as a means of correcting the impairment of economic disadvantage of the 8(a) firms. The House Conference Report No. 96-1434 accompanying H.R. 5612 contained language closely paralleling the sections referenced above. The Report (page 16) indicated that the purpose of the 8(a) business plan was to correct the parrticipants' economic impairment, and that SBA's financial, technical and management assistance, and contract support were provided to overcome the economic disadvantage of the program participants.

From all of the foregoing, it is clear that the statutory essence of the 8(a) program is to promote competitive viability for program participants, or to otherwise overcome the economic disadvantage which impairs their ability to compete in the economic system.

SBA's 5 year plan for participation in the 8(a) program is significantly out of consonnance with P. 95-481, PL 95-507, and with all of the elements of the Small Business Act which establish competitive viability as the underlying goal or purpose of the 8(a) program. In its operation, SBA's rule establishes a fixed program participation period for all 8(a) companies. The only possible variation to this 5 year maximum term is a one time, one to two year extension. Indeed, the proposed rule specifically

states that the maximum terms will apply "regardless of whether competitiveness is reached." This approach still ignores the broad statutory goal of the 8(a) program of achieving competitive viability for economically disadvantaged firms.

SBA's graduation scheme is not founded on criteria measuring the extent to which progress toward competitive viability is being made by program participants. HR-863 endeavors to correct this difficiency.

SBA'S GRADUATION POLICY LACKS ANALYTICAL BASE

SBA's approach to graduation contains another serious flaw which is not in keeping with the intent of Congress. This flaw is the lack of any analytical basis for the 5 year approach. In reviewing Senator Morgan's proposed Bill (which would have limited all 8(a) firms to 5 years participation), the Committee expressly acknowledged (pages 23 of the Committee's Report) that it could not establish graduation terms without the necessary data to assess the merits and impact of any fixed participation period. The Committee, therefore, did not fix any period for graduation.

The Committee further indicated (page 21) that SBA had admitted not having the basic data on which to make fundamental programmatic judgements about the success of the agency's efforts in achieving competitive viability for 8(a) firms. In this regard, the Committee expressly stated (page 21) that, in view of

the Committee's amendment requiring the Agency to set graduation date for each 8(a) firm, the Agency "must conduct a review and analysis of the current portfolio" with particular attention to such factors as:

1. The growth rate of the 8(a) firms;
2. The number and value of 8(a) and non-8(a) contracts received;
3. An analysis (on a regional state and/or local basis) of the:
   a. market potential of the 8(a) firm;
   b. market concentration of the 8(a) firm;
   c. contract performance of the 8(a) firm.

The Committee also stated (page 23) that, in establishing graduation dates, SBA should take into consideration:

1. The amount of SBA assistance needed to correct the impairment of the 8(a) concern;
2. The individual characteristics of the 8(a) concern;
3. The locale wherein the 8(a) firm conducts its business;
4. The nature of the industry;
5. The availability of private sector capital and procurement to assist the firm in achieving maturity in the economic system.

Despite the strong legislative history regarding the need for an analytical basis for establishing a sound approach to the graduation issue, SBA's 5 year graduation rule has no analytical foundation. In fact, SBA clearly appears to have ignored much of the data which was available, including the following studies and reports, all of which reveal that 5 years is inadequate for purposes of achieving comeptitive viability:

1. "Tax Incentives for Small Business, Heller Small Business Institute Policy Papers, Wharton School of Business, University of Pennsylvania: 1980.
2. "Report of the Joint Industrial/Government Committee on Small Business Finance - The Current Environment and Suggestions for Improvement", National Association of Securities Dealers, Inc., May 22, 1979.
3. "Report of the SBA Task Force on Venture Capital for Small Business", Small Business Administration: January 1977.

At the May 21st hearing (1982) of the House Select Committee on Small Business, Congressman Parren Mitchell asked SBA Administrator Cardenas to cite the analytical data underpinning his 3 to 5 year graduation proposal. The Administrator responded that the proposal was based on "common busiess sense". While common business sense may have served Mr. Cardenas well in the conduct of his own accounting firm, this is clearly an insufficient analytical framework for implementing the Federal government's primary program designed to bring the minority

business community into the mainstream of our economic system. The main point is that SBA is not in consonnance with the intent of Congress in the establishment of a data base to justify the graduation proposals. Despite the few minor corrections to the proposed final rule (as discussed on page 4), we still have a graduation program based on the former Administrator's notion of "common business sense." The program still lacks an analytical base.

SBA'S GRADUATION POLICY LACKS FLEXIBILITY

SBA's rule is inflexible and is contrary to many specific provisions of the Senate Report No. 96-974 which speaks at length to the need for flexibility and consideration of 8(a) companies on a case-by-case basis. In Senate Report No. 96-974, the Committee stated (page 23) that SBA should analyze each participant's economic disadvantage and establish a date when each firm can expect to be graduated, and that the "graduation date is to be the same time that SBA determines that the financial, technical and contract support provided to the 8(a) concern will overcome the economic disadvantage determined to exist..."

The Committee decided that the Congress lacked the data base upon which to establish graduation dates and, in the alternative, placed the responsibility with SBA "so as to ensure that flexibility exists within the agency to take into account the individual characteristics of the company, the locale in which the firm conducts its business, and the nature of the industry". The Comnmittee further indicated that business and economic conditions could change so as to warrant a change in the graduation date.

In providing SBA this direction and the flexibility to make judgements on a case-by-case basis, the Committee went out of its way to state that SBA could reassess the appropriate period for graduation at any time (page 23). The Committee went even further (page 24) to exclude the adjudicatory hearing process "so as to leave the full flexibility the Committee believes SBA needs in fixing the graduation date."

Despite the overhelming stress the Committee placed on flexibility and a case-by-case assessment, SBA has established restrictive participation terms which apply arbitrarily across-the-board without regard for the individual characteristics of each company. SBA's approach is not in keeping with the intent of Congress with respect to the case-by-case analysis of each participant's situation, nor with respect to the flexibility which the Congress expressly gave SBA for purposes of implementing an approach to graduation designed to overcome the impediments to comeptitive viability.

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There is no basis, furthermore, for SBA's rigid posture of a one time extension. The Committee specifically stated that nothing in the legislation precluded SBA from amending the graduation dates at any time. There is nothing in the statute or the legislative history which stipulates one time extensions. In addition, PL 96-481 specifically states that SBA can review and extend program participation periods "as necessary and appropriate" (SEC. 106. (a)). The only condition is that this occur at least one year prior to the fixed graduation date.

FPPT PERIOD TOO SHORT

In our judgement, the FPPT periods are too short for purposes of achieving competitive viability, particularly in manufacturing and high technology areas. The following are some of the more obvious reasons:

1. Inadequate contract support

   The first problem has to do with access to contracts. The record clearly shows that SBA does a poor job in assisting 8(a) firms in identifying contracts. Were it not for self-marketing, most 8(a) firms would never secure contracts. Some 600 8(a) firms received no contract support FY 1981. With the exception of the small percentage of firms receiving the bulk of contract support, most of the remaining firms in the portfolio received inadequate contract support.

In LAMA's survey of 50 Hispanic 8(a) firms in preparation of this material, the vast majority reported no assistance from SBA officials in identifying requirements. Most reported that they did not know SBA's PCRs, and most reported very little support from SBA's personnel at major military installations. In fact, in most cases, the support was usually limited to being given the 129 Form and getting placed on the source list (which is the quickest way possible to be forgotten). In most instances, SBA's PCRs and the small business representatives at major defense installations have in-depth knowledge of the technical capabilities of only a half dozen or so 8(a) firms.

SBA's BDSs are known for their lack of technical sophistication. Only a handful are knowledgeable of the technical capabilities of a few 8(a) manufacturing firms. Only a handful would be qualified to articulate the technical capabilities of such firms to procurement directors of major military installations. A contributing factor is that SBA's 8(a) business plans do not include an in-depth profile of each company's capabilities. This overall situation suggests that SBA's lack of effective marketing support is a major contributing factor to the ineffectiveness of the 8(a) program.

2. Low Level of Contract Support

The prevailing pattern is for the buying locations to start the 8(a) firms with small contracts at the beginning. A highly qualified Hispanic manufacturing 8(a) firm in Chicago, for instance, received no contract support its first year, a $16,000 contract the second year, a $75,000 contract the third year and a $34,000 contract the fourth year, and only in the fifth year did the cmpany secure a really meaningful contract - $190,000. The rationale was that the new 8(a) firm had to "prove itself".

The general pattern is for most 8(a) companies to receive no contract support in the first year and to secure only modest support in the second and third years. This pattern of low level of contract support in the first three years clearly demonstrates that at least half of the 8(a) experience contributes very little to the competitive viability of the portfolio firms.

3. Lack of Marketing Capacity

The lack of marketing skills on the part of 8(a) firms contributes to this pattern of slow start up in the early years of the 8(a) program. By definition, most 8(a) firms are small and don't have a sophisticated

marketing program. The owner of the firm is usually the technical/production person and also serves as the marketing staff. Their knowledge of the DOD procurement structure is usually extremely limited. Their ability to do the research necessary to identify the appropriate installations to market is limited. They may spend several years just determining their marketing targets.

Their initial contacts tend to be fairly ineffective since they don't know the system. Their sales presentations are frequently poor because, although they are good in their technical areas, they tend to have poor communication skills. This contributes to the attitude of the procurement personnel of starting on a very small scale at first to test the company. This lack of marketing skills by 8(a) company owners substantially slows down the growth potential available through the 8(a) program.

4. Lack of Training

Despite the availability of $10 million through the 7(j) fund, SBA has no executive development program for 8(a) participants. There is no sequence of coursework or seminars through which each 8(a) participant must pass covering the areas of marketing, management and finance which are so vital to the progress of 8(a) firms in moving toward competitive viability.

On ocassion, SBA has carried out well executed seminars at major business schools such as Harvard or Dartmouth, I recall. However, these lack continuity, are not part of a structured developmental plan, and were typically limited to a handful of the more advanced 8(a) companies.

The current FPPT approach contains no system for determining each participants' critical educational needs, nor does the current FPPT system evaluate the extent to which SBA has provided the marketing, management, and finance training so vital to the achievement of compatitive viability of the program participants.

5. The Marketing/Contracting/Production Cycle

In the manufacturing area, all of the factors discussed in the foregoing sections are greatly magnified due to the high technologies involved, the Mil Specs to which the 8(a) firms must conform, the plant reviews and approvals which must be secured, the long lead times

which are normal for manufactured components, and the time required to secure first article approval. A typical 8(a) manufacturing company will spend a year at marketing leading to the identification of a suitable requirement. Another six months or more will be spent in the negotiations and approvals process leading to the consumation of a contract. Another three to six months will be spent in securing long lead-time materials and components, and several more months will be involved in securing first article approval of the item. The average length of time, therefore, involved in the major steps of marketing, contract identification, negotiation, production and delivery is two to three years for a relatively routine component built to specifications.

The process is even more drawn out for those few 8(a) firms which have been able to secure contracts at the R&D stage involving design engineering. A year or two can be added for the design phase, prototype production, and testing. A Hispanic 8(a) firm on the East Coast is manufacturing a detonation device under the 8(a) program. At present, we estimate that it will be three-and-one-half years before the production cycle even begins. By way of another example, it took three years to consummate the $27 million contract for Welbilt

to manufacture 6 HP Military Standard Engine from the time the requirement it was first surfaced at SBA for a possible 8(a) award. The total procurement cycle for a multi-million dollar requirement involving design engineering (as opposed to building to existing specifications) can take five years or more.

The point is that, for those 8(a) firms in the manufacturing arena which are fortunate enough to secure meaningful contracts, the cycle involving marketing, contract identification, negotiation, plant & QC approvals, materials acquisition, first item approval, production and delivery, can involve five years. Most 8(a) companies do not secure many such requirements in their experience in the 8(a) program. For those that do, they rarely secure more than one or two in the 5 year time frame presently established by SBA for participation of manufacturing firms in the 8(a) program. A typical manufacturing firm will need meaningful contracts from at least six to eight different military installations in order to effectively learn the defense procurement system, to become an accepted producer, and to become prepared to compete in the high technology manufacturing arena.

Ten years should be the minimum period of time in the 8(a) program for those manufacturing firms having potential as meaningful suppliers in the defense and technical industries.

6. Team-Building

Most 8(a) manufacturing firms in the portfolio come into the program with the following characteristics:

1. $100,000 to $250,000 in sales
2. No full time marketing staff
3. No full time engineering staff
4. Owner is production head and technical backbone of the company.
5. Unsophisticated accounting system
6. No approved QC system meeting 45208A or 9858
7. Underdeveloped financial relationships

This typical company will go through at least a 10 year learning and development process before it can be considered ready to meet the competition head on. The typical manufacturing company will need to reach sales of around $1 million before bringing on a production foreman and a marketing person. At this level, the company will have performed work to Mil Spec 45208A on a subcontract basis and can move toward establishing a government approved QC system.

At sales of $2 million or so, the company may hire a full-time QC director and bring on a full-time engineer. At this point, the financial system, payroll, materials and invetory may begin to be computerized. For sales from $2 to $5 million, contract financing becomes increasingly important, and the owner will spend more time developing banking relations so as to sustain his cash flow as he performs larger contracts which tie up his capital for longer periods.

At sales of $5 million and over, the business begins to have a core complement of managers in the marketing, finance, engineering, production, and quality control areas. While this is a generalized pattern and is not necessarily applicable across the board, it clearly shows that a manufacturing firm with $750,000 in sales is not ready for graduation. It shows that team-building is a gradual process and that it is tied directly to sales. Nothing in SBA's approach to graduation to date suggests an awareness of this critical team-building process, nor is team-building factored for in the numerical rating system based upon which FPPTs are established.

PHASED GRADUATION

One of the most onerous and un-businesslike facets of the current graduation rule is the failure to provide for phased graduation from the 8(a) program. Graduating firms are simply cut off from 8(a) contracts from one day to the next, regardless of the impact on competitive viability. Instantaneous graduation will normally impact every area of a company's exixtence, including:

1. Instant and often dramatic drop in sales;
2. Reduction in production, managerial, and engineering staff (with disasterous impact on the team-building process);
3. Adverse impact on equipment and facility leases;
4. Adverse impact on long term loans and relationships with fiancial institutions.

Firms having 50% 8(a) sales and 50% non-8(a) sales at graduation time will experience a shock from which many of them will never recover. Just ask yourselves how many banks would touch a company which, because of SBA's graduation policy, was about to experience a 50% drop in sales? Instantaneous graduation remains one of the most destructive features of the current graduation rule.

CONCLUSIONS AND RECOMMENDATIONS

Our central conclusions are that the current FPPT system is not oriented toward competitive viability, the system is too rigid, too short, has no analytical base, contains no provision for phased graudation, has no numerical criteria for measuring each participant's progress during the program, and is generally out of consonnance with Congressional intent. Added to the shortcomings of the FPPT system are the facts that SBA provides inadequate marketing and contract support, and inadequate training to 8(a) companies during their tenure in the program.

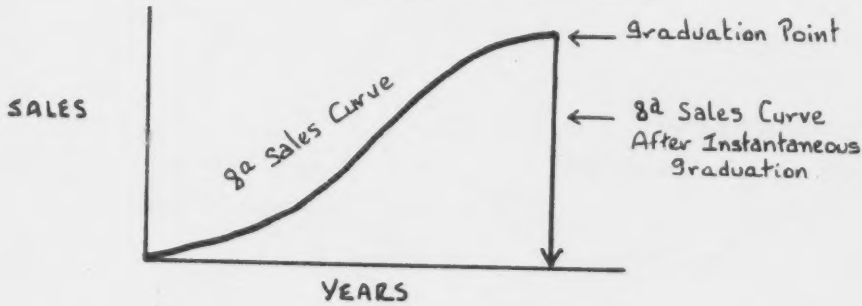
Recommendation No. 1 - Analytical Base

We urge the Committee to cause SBA to undertake a definitive study to answer the question - How long should minority firms need SBA 8(a) assistance in order to achieve competitive viability? This study should utilize the talents of the nation's most outstanding business schools and business management companies. The study should also include an empirical assessment of the actual experiences of a cross-section of 8(a) firms. Such a study must necessarily be the cornerstone for permanently resolving the issue of how much time 8(a) companies need in the program to achieve competitive viability.

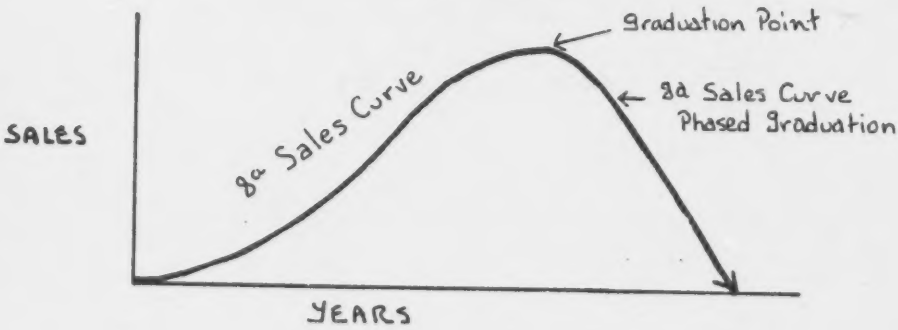
Recommendation No. 2 - Phased Graduation

Instantaneous graduation is a highly undesireable feature of the current FPPT system. We believe that every company in the program should be eligible for a period of phased withdrawal at the end of its 8(a) term in the event they have been unsuccessful in negotiating multi-year contracts which would continue post-graduation. Graphs No. 1 and No. 2 below indicate the difference between instantaneous graduation and phased withdrawal.

Graph No. 1 - Instantaneous Graduation



Graph No. 2 - Phased Graduation



We recommend that phased withdrawal take place over a four year period at an average reduction in 8(a) contract support of 20% per year from the highest level of 8(a) support received by each 8(a) firm. The percentage could vary considerably in any year so as to accomodate larger or smaller contract opportunities during the withdrawal process. The total level of contracts, however, for the four year period would not exceed the aggregate total represented by the 20% per year reduction. Those 8(a) firms fortunate enough to have negotiated multi-year contracts near their graduation point could opt not to participate in the four year phased withdrawal scheme.

Recommendation No. 3 - Longer 8(a) Terms

We belive that, while the analytical base referenced in Recommendation No. 1 is being developed, the current FPPT system should be amended to allow longer terms. We recommend:

a. that the initial fixed term should be 5 years for all 8(a) firms;

b. that extensions should be given in two year increments ranging from 2 years to 6 years according to the technical complexity of each industry;

c. that all firms should have a four year phased withdrawal upon completion of the initial fixed term plus extensions.

This system is set forth in the following chart:

Years In 8(a) Program by Type of Firm

Phased	Total Years Fixed Term	Extensions	Withdrawal	Initial Min.	Initial Max.
Consultants	5	2	4	9	11
A&E	5	4*	4	9	13
Construction	5	4*	4	9	13
Manufacturing	5	6*	4	9	15

(*Extensions granted in two-year increments)

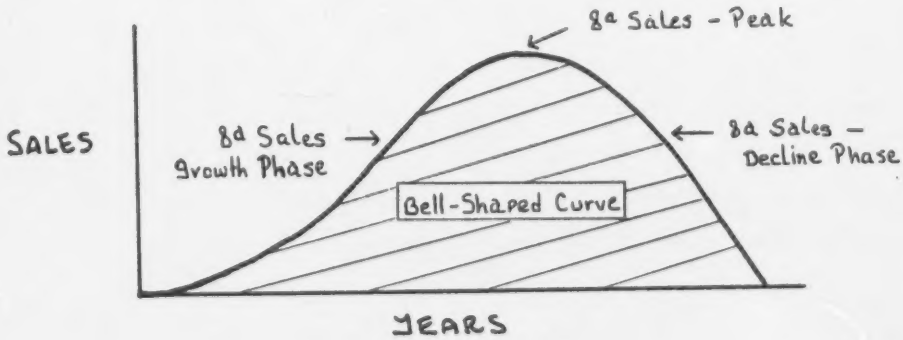
We feel that the initial fixed term should be five years for all companies. First of all, although the current FPPT allows for up to five years, most firms are granted only three to four years. Five years for all firms would give the companies a stable base for planning their 8(a) development. Less than five years may make the program unattractive to qualified candidates because they are not convinced it is worth it to complete the formidable 8(a) package and struggle for a year or two to get into a program which may only last two or three years. In addition, it does not make much sense to grant companies two or three year initial terms when the evidence shows that very little progress toward competitive viability takes place at the front end of the 8(a) process.

Under our proposed system, extensions beyond the initial five year term would be granted upon each firm's successful completion of numerical goals set forth in the business plan for management, marketing, and finance, as well as the demonstrated need for

additional 8(a) contract support to move toward competitive viability. No 8(a) firm would be guaranteed any specific number of years in the program. Phased withdrawal could commence at any point in time wherein SBA determined that the firm was not making sufficient progress toward meeting its business plan goals.

Whatever system is adopted, it is essential that it be recognized that the 8(a) life cycle should be a bell-shaped curve. The bell-shaped curve starts from zero sales, rises to a maximum level of 8(a) support over a number of years, and then gradually diminishes to zero over a period of years. The bell-shaped curve is depicted in Graph No. 3 below.

Graph No. 3 - Cycle of 8(a) Contract Support



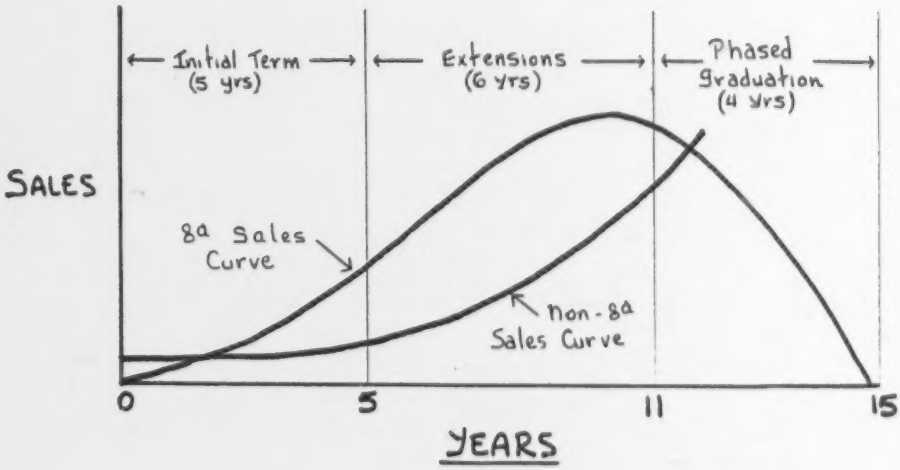
Ideally, the bell-shaped 8(a) sales curve should be complemented by a non-8(a) sales curve. The non-8(a) sales curve would start somewhere above zero (representing a company's sales upon entry into the 8(a) program), rise more slowly than the 8(a) contract curve (representing the slower growth in the competitive marketplace), rise more quickly in the latter stages of the firm's 8(a) term (representing increasing ability to compete), and finally cross the 8(a) curve at some point near where the 8(a) support begins to taper off through the phased withdrawal process. Graph No. 4 illustrates the interaction of the bell-shaped 8(a) sales curve and the steadily rising non-8(a) sales curve.

Graph No. 4 - 8(a) and non-8(a) Sales Curves

Graph No. 5 below depicts the interaction of all the foregoing recommendations for a successful 8(a) manufacturing firm. The graph includes:

1. A 5 year Initial Fixed Term;
2. Three two-year Extensions;
3. A four-year Phased Withdrawal;
4. Non-8(a) sales curve.

Graph No. 5 - Life Cycle of Successful 8(a) Manufacturing Firm



Recommendation No. 4 - Marketing/Requirements Support

The 8(a) program has placed $8 billion in contract awards over the past decade. The figure may reach $15 billion in the next three fiscal years or so. The 8(a) program has become serious business, yet the irony remains that SBA is still ineffective in identifying requirements for the firms in the portfolio, and the bulk of the requirements continue to flow to a small percentage of 8(a) firms which have developed highly refined self-marketing skills.

While 8(a) companies must themselves make steady progress in meeting their business plan goals, so must SBA keep its side of the bargain. SBA's side of the bargain is to provide its companies with the requirements essential to their development. Graduation should not occur unless SBA can keep its side of the bargain. SBA must radically improve its ability to identify and deliver requirements to its portfolio companies, to provide contract support with greater continuity, and spread contract support out over the entire portfolio (instead of most of the requirements going to a small percentage of the portfolio).

We recommend that the Congress allocate $5 million dollars for the placement of 50 MBE/PCRs (Procurement Center Representatives) at key procurement locations throughout the Federal Government, and that the sole function of these MBE/PCRs be the identification of

requirements which may be suitable for the 8(a) program. These MBE/PCRs must be provided full access to the flow of requirements in their respective agencies. They must be assigned goals and be responsible directly to SBA for the successful achievement of those goals.

In addition, SBA must be given additional authority by the Congress in designating 8(a) set asides. SBA must be given the authority to designate set-asides subject only to incontrovertible proof by the buying agency of a technical inability by the designated 8(a) firm to perform the requirement. Two precedents for this increased authority are the set-aside programs for the Prison Industries, and the Blind and Severely Handicapped.

The placement of MBE/PCRs in the Federal procurement system and the increased authority for SBA to designate 8(a) contracts will do more to overcome the lack of continuity in the flow of 8(a) contracts and the slow rate of 8(a) awards characteristic of the first two or three years of the 8(a) process than any other actions contemplated by the Committee in the last three years. I feel so strongly about the MBE/PCR issue that I would even recommend that the funding for this action be taken out of the BDE and 7(j) programs for immediate implementation of the concept.

It is essential that SBA take hold of the reins of the flow of requirements in order to make this 8(a) program effective. Otherwise the program will never fulfill its promise, and hundreds of companies will simply by cycled through the program like a revolving door with the majority having little prospect of achieving competitive viability.

Recommendation No. 5 - Executive Development Program

In addition to providing portfolio companies with a reasonable level of contract support, SBA's side of the bargain must include the development and implementation of a highly professional sequence of courses designed to ensure that the owners and top managers of portfolio companies develop first class executive skills in marketing, management, and finance. Given SBA's paltry record in this area in the past, SBA must radically revise its thinking about its responsibility for training of portfolio companies. It is not enough to provide 8a certification without an executive skills development program.

SBA must accept its responsibility of making the best training in the country available to portfolio companies as part of the 8a program. SBA should not graduate any firm which has not been exposed to or offered (at reasonable times and places) comprehensive training in management, marketing, and finance. Furthermore, SBA should not let anyone into the program who does not agree to participate in an executive development program.

Such training should be made available to all 8a company owners and their top marketing, management, and finance managers during the initial five year term in the 8a program. Training should be made available at major metropolitan cities around the country so as to be accessible to 8a firms throughout the country. The sessions should be scheduled on weekends and other reasonable times so as to cut into the normal work week as little as possible.

For the design of this executive development program, SBA should reach out to the nation's foremost business schools and business management companies. The most advanced 8a companies should be consulted as to those areas of expertise in dealing with the government which have been critical to their success.

The following outline is a rough guide to the areas which should be covered in an executive development program during each participants initial five year term:

1. Marketing:

   Product assessment

   Market analysis (public and private sectors)

   Strategic market planning

   Company image

   Capability presentation

   Government contracts

   Proposals

   Costing

2. Management

   Organization and control

   Management structures

   DARs and FARs

   Contract negotiations

   Materials and quality control

   Office automation

   Project management (program review techniques, work breakdown structures, etc.)

   Personnel operations

3. Finance

   Financial statements

   Financial planning (cash flow projections, debt ratio planning, etc.)

   Government cost accounting

   Defense Contract Audit Agency

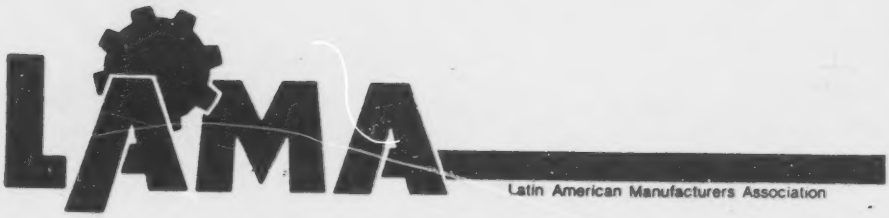
   Indirect cost rates

   Automation of financial controls

   Financial reporting and contract close out

While this list is certainly not exhaustive, it clearly sets forth some of the key areas which are critical in an executive training program. The key idea is that SBA needs to assume a central and vigorous role in ensuring that all 8a company owners receive top flight executive training as part of SBA's responsibility in fostering competitive viability of its protfolio companies. As part of its side of the bargain, SBA must not graduate any firm which had not been exposed to or offered an executive development program.

Mr. Chairman - Thank you for your interest in our views on graduation and the opportunity to appear before this Committee.



October 23, 1981

Honorable Ronald Reagan
President of the
United States of America
The White House
Washington, D.C. 20500

Dear President Reagan:

Occasionally, Mr. President, an issue of such gravity and magnitude arises that we must appeal directly to you for redress. Such an issue involves the final regulations governing graduation from SBA's 8(a) program which SBA sent to OMB on October 19 for review and publication in the Federal Register.

While controversial and sometimes mismanaged, the 8(a) program remains the Federal Government's only viable vehicle for insuring that qualified minority-owned companies participate in some small degree in direct government contracts. This program is not large when you consider that the 2,200 or so firms in the 8(a) program represent less than 1/2 of 1% of the over 500,000 minority firms in the United States today.

We sympathize with the need for a fair and business-like approach to the graduation of 8(a) companies from the program. The final regulations proposed by SBA, however, go far beyond anything reasonable and, if implemented, would virtually decimate the 8(a) program.

SBA's final rule limits participation in the 8(a) program to 3 years for service firms and 5 years for all other firms. Currently, there are 831 service firms which have been in the 8(a) program 3 years or more, and 556 firms of all other categories which have been in the program 5 years or more. This means that as many as 1,387 companies could be eliminated from the 8(a) program upon the implementation of the proposed final rule - 63% of the portfolio of 2,200 8(a) firms.

Alternatively, if the 226 firms eligible for a one-time, one-year extension were granted such an extension, some 1,121 firms would be eliminated from the 8(a) program upon the implementation of the final rule - 50% of the portfolio.

By the end of 1982, or about a year from now, some 223 additional firms could be eliminated from the 8(a) program. Therefore, by the end of 1982, as many as 1,610 firms could be eliminated from the 8(a) program - 73% of the portfolio. If the 223 firms eligible for a one year extension at the end of 1982 were granted such an extension, 1,387 firms would be eliminated from the 8(a) program by the end of 1982 - 65% of the current portfolio.

This bleak situation is compounded by SBA's stated intention of graduating many of the 600 or so 8(a) firms which have been unable to secure 8(a) contracts on their own (precisely those firms which are most in need of SBA's assistance). The number of 8(a) firms which would be eliminated by this provision cannot be ascertained at this time. It is clear, however, that this action will compound the overall situation described above.

Further exacerbating all of the foregoing is the fact that there is no provision for phased graduation from the 8(a) program. For purposes of illustration, consider the circumstances of a successful minority firm which reaches its graduation date having annual sales of $10 million, evenly divided between 8(a) sales and commercial sales. Immediately upon graduation, the firm would experience a 50% drop in sales, a shock from which it may not recover. This is essentially what will happen to those thousand or more 8(a) firms which will be graduated upon the implementation of SBA's final rule. Without a provision for phased graduation, the basic purpose of the 8(a) program of moving the 8(a) firms toward competitive viability will be defeated.

Those of us in leadership positions realize that your Administration could not possibly have intended the wholesale destruction of the Federal government's principal minority business development program. SBA's final rule is seriously out of consonance with congressional intent as reflected in the relevant legislative history. It is possible that SBA itself may not have realized the magnitude of the adverse impact of its proposed final rule.

We ask you, in the name of prudence and reasonableness, to stop the publication of SBA's final rule in the Federal Register until your staff has an opportunity to study this matter. You do not want the thoughtless destruction of the 8(a) program to be part of your Administration's legacy. Thank you for your consideration in this most critical matter.

Very truly yours,

Stephen Danlinger
President

SD/dga

cc: The Honorable Edwin Meese III
The Honorable Michael Deaver
The Honorable James Baker III
The Honorable Lynn Nofziger
The Honorable Elizabeth Dole
The Honorable Dr. Martin Anderson
The Honorable David Stockman, OMB
Mr. James Miller III, OMB

Impact of SBA's Final Rule

This chart sets forth the number of firms entering the 8(a) program by year from 1969 through 1981. The chart shows that as many as 1,387 firms could be eliminated from the 8(a) program upon implementation of the SBA's final rule if no extensions are granted - 65% of the 8(a) portfolio of some 2,200 firms. The chart shows that 1,121 firms would be eliminated from the 8(a) program upon implementation of SBA's final rule, even if every firm eligible for a one-year extension received such an extension - 50% of the portfolio.

YEAR OF ENTRY INTO 8(a)*

	69	70	71	72	73	74	75	76	77	78	79	80	81
SERVICE COMPANIES (3 Year maximum term - one year extension possible)													
Number of entrants each year	0	39	85	90	74	85	89	129	76	164	146	129	N/A
Cummulative number of entrants	0	39	134	214	288	373	462	591	667	831	977	1106	N/A
Total number in 8(a) 3 years or more													
ALL OTHER 8(a) COMPANIES (5 Year maximum term - one year extension possible)													
Number of entrants each year	2	26	77	102	84	62	101	102	77	130	133	120	N/A
Cummulative number of entrants	2	28	105	207	291	353	454	556	633	763	896	1106	N/A
Total number in 8(a) 5 years or more													

GRADUATION

Number of firms to be graduated upon implementation of the final rule if no extensions are granted	1,387 companies (831 service firms and 556 all other 8(a) companies - 63% of the portfolio)
Number of firms to be graduated if one year extensions are granted to all firms eligible for an extension	1,121 companies (667 service firms and 454 all other 8(a) companies - 50% of the portfolio)

* (Source - Firms in the 8(a) Business Development Program - SBA - September, 1980)

Mr. MITCHELL. Mr. Chang.

TESTIMONY OF WILSON CHANG, DIRECTOR, BUSINESS DEVELOPMENT DIVISION, ASIAN, INC.

Mr. CHANG. Good morning, Mr. Chairman.

My name is Wilson Chang, and I am appearing today in lieu of Mr. Harold Yee, president of ASIAN, Inc.

Mr. Yee sends his greetings and his regrets for not being able to appear today.

ASIAN, Inc., is a nonprofit organization, providing research and technical assistance to improve the economic and social conditions of the Asian American communities in the San Francisco Bay area. Some of our research findings and our technical assistance indeed impact a much broader area, including the national level.

ASIAN, Inc. has been invited to testify before this committee in the past, and we welcome the opportunity to once again provide testimony on a subject matter that concerns the welfare of Asian small businesses.

I am the director of the business development division of ASIAN, Inc. My division provides management and technical assistance, marketing and procurement assistance to Asian and other small businesses in the San Francisco Bay area.

We also provide staff support for a number of trade associations, local development corporations, MESBIC's, and other business and economic development activities.

I have been actively involved in the continuing efforts to bring the Asian American business community into the public decision-making process, where their voices must be heard, so that a fair share of resources can be allocated for the development and growth of this segment of the minority business community.

ASIAN, Inc. has been invited to submit comments on H.R. 863, a bill amending the capital ownership development program of the Small Business Act.

Before I speak on the particulars of the legislation, I would like to give some background on the state of Asian American business development, with the emphasis on Federal assistance to minority business development.

In the past 17 years of Federal initiative and assistance to minority business development, there has been a concerted effort to develop a business development infrastructure to focus and leverage resources within the black, Hispanic, and Native American business communities.

No such program or effort was provided for the Asian community. Without the leadership and the Federal resources provided to other minority groups, the Asian Americans have been excluded in the overall business development strategy.

This exclusion reached its lowest point in the exclusion of Asian Americans in Public Law 95-507. Of course, that problem has been rectified and Asians have been reinstated into the program.

However, let us review the few bones that have been tossed to the Asian American business community, prior to Public Law 95-507 and past.

In the Minority Business Development Agency. In the past decade, 1972 to 1982, MBDA has awarded over $400 million in grants and contracts to blacks, Hispanics, Native Americans, Asian Americans, local and State governments, and even majority firms to provide management and technical assistance and other business development services to the minority business community.

Although Asians represent over 20 percent of the minority business population, Asians have received less than $3 million of assistance in the entire 10 years.

Less than 1 percent of $400 million.

As a basis of comparison, the Native Americans received over $15 million, yet they comprise 1 percent of the minority business population.

Who gets served here is determined by who does the serving. I think this axiom still holds. There are no Asian Americans in any policy or program directing positions in MBDA. Out of the recent business development center awards, only 1 of the 100 awards went to an Asian firm. That business development center is in Hawaii. But, of course, the Governor is Asian; the two Senators are Asian.

We look forward to testifying on your bill, H.R. 1158.

In the Small Business Administration, following Public Law 95-507, the SBA awarded over $30 million in 7(j) contracts, from 1978 to 1982, to various minority and majority firms and business organizations to assist firms participating in the 8(a) program.

Again, not 1 cent has been awarded to any Asian business development organization or effort to assist the Asian business community.

We recognize and appreciate the sensitivity of the committee in calling attention in its December report on the 8(a) program to the lack of effort on the part of SBA to addressing the lack of participation by Asian Americans in the 8(a) program.

There are approximately 100 Asian firms in the 8(a) program today, representing about 5 percent of the total portfolio. About 50 of those firms are in Hawaii, where the district director is an Asian. There are 22 in San Francisco, 6 in Los Angeles, about 10 in Utah, and about 10 here in Washington, and the rest are scattered throughout the Nation. One of the 23 firms selected to be graduated by the SBA is an Asian firm.

The record clearly shows that Asians are not benefiting equitably in the 8(a) program, either in terms of numbers of firms participating in the program, or in terms of firms receiving management and technical assistance, business development expenses or advance payment assistance, or even in contract support.

In preparation for presenting this testimony, ASIAN, Inc., consulted with several Asian trade associations in the Bay area—the United Asian Contractors Association, the Asian American Architects & Engineers, whose president Alvin Joe will also be presenting testimony today; the Asian American Manufacturers Association; and the Council of Asian American Business Associations.

Thus, the testimony given today is the compilation of concerns, thoughts and experiences of the Asian business community in the Bay area, particularly of firms participating in the 8(a) program.

I spoke with 10 of the 22 Asian firms in the San Francisco district to solicit their comments on their experiences in the 8(a) pro-

gram. Many of them did not receive any 8(a) contract support in 1982.

I think this bears out what Mr. Thomas had said earlier.

Of the four construction firms I spoke with, one has a $500,000 contract; another has only $90,000, and this one is most concerned.

This firm that received only $90,000 this particular year received over $3 million in 1981, did not receive any in 1982, and today he is at about $250,000 in terms of his sales; and that is really hurting him tremendously.

The other two have not received any contract support at all.

Of the three high technology firms—and this is, of course, an area that SBA has stressed tremendous growth in, one will be receiving about $600,000 this year, but the other two foresee only about $50,000 each.

Needless to say, these firms are very discouraged about the 8(a) program. I intend to conduct a thorough review of the record of assistance to these firms when I return to San Francisco and then to conduct a meeting with the appropriate SBA officials about this situation.

Now, to present our comments on H.R. 863.

We support the concept of establishing predetermined "criteria of competitiveness" for financial, management, and marketing functions so that the progress toward competitiveness can be measured. This concept calls for a balanced approach to the development of the firm. It focuses on the need to utilize a more comprehensive business development strategy than heretofore demonstrated in the 8(a) program today.

Rather than focusing on the date which the firm is graduated or terminated, the concept calls for a measurement of success, its achievement of criteria of competitiveness; as the determinant for program separation.

As a consequence, the degree and intensity of assistance from SBA to the 8(a) firms would increase through concentration on helping the firm to become more profitable, to increasing its management capabilities, and to expanding its markets beyond that of the sheltered 8(a) contracts, in addition to its procurement activities.

Therefore, participation in the 8(a) program will become an intensive growing period that gives greater assurance that firms graduating from the program will truly be competitive in the mainstream. This was the promise of Public Law 95-507, and this bill provides the fine tuning to reach that goal.

The 8(a) program is a self-elective program. With the limited resources that SBA possesses, the firms participating should be high potential, economically ambitious companies that want to exceed small business standards.

Entry standards should be sufficiently high enough to reflect the realities of performing Federal contracts and competing in the open market.

We envision a dynamic program where minority firms will leverage their participation in these sheltered markets into solid foundations from which to launch their assault on the competitive marketplace.

The criteria of competitiveness must be set at levels comparable to efficient firms competitive in the mainstream. Within this conceptual framework, we will address the specific provisions for graduation and termination.

We support the 85-percent average and the 75-percent minimum completion levels for graduation. Given the comprehensive approach in measuring financial, management and marketing capabilities, the firm is more roundly prepared for competition in the open market.

Additionally, we are confident that the set of criteria of competitiveness will be thorough enough to insure that 75-percent completion will be adequate preparation.

However, we believe that there still must be some form of incentive to graduate and or disincentive to remain in the program. To rely solely on the goodwill of the firm to leave the 8(a) sheltered markets is contrary to past behavior.

Thus, we turn our attention to the termination provisions. We suggest that the annual evaluation of progress take into consideration and make appropriate adjustments for slippage in achievement of annual criteria attributable to circumstances beyond the control of the 8(a) firm. Among these are ineffective assistance from SBA, changes in economic conditions nationally or regionally, and inflation.

There is a moral obligation to allow the firm to rework its business plan and criteria of competitiveness if events occur, of no fault of the firm, to hamper its development.

Given these adjustments, however, we would like to see that an average of at least 50 percent of its criteria of competitiveness, adjusted as described above, be achieved in any given year.

We believe that the proposed level of 25 percent does not challenge the firm to compete, even if it is with itself.

In keeping with this philosophy, we feel that the level for 3 consecutive years should be at least 30 percent more than the average of such criteria achieved in the immediately preceding year.

Again, we must reiterate, these figures are based on the adjusted goals.

On the matter of due process, we agree with it.

On the issue of exempting 8(a) contracts in computing the size of the firm, we agree with this sheltered industry concept. However, we believe that such growth of the firm beyond the small business size standards must be considered deliberate and provided for in the criteria of competitiveness.

In conclusion, we support this amendment to the capital ownership development program. There is a need for a program that is specifically tailored to bring minority firms into the mainstream of competition. This has been the charge to the 8(a) program, and now this amendment provides the avenues for both the SBA and the 8(a) firms to work together to reach that goal.

We greatly appreciate this opportunity to present this testimony.

Mr. MITCHELL. Thank you very much.

I just have to indicate to you now that the drop in the dollar volume in contracts that your firms experienced over the past year is fairly typical of what happened to all the firms.

Apparently, SBA decided to do a 1-year Rip Van Winkle program, and just go to sleep; and I think across the board, the Hispanic firms, the black firms have experienced that same kind of drop, which is irritating to say the least.

[Mr. Chang's prepared statement follows:]

Prepared Statement of Wilson Chang, Director, Business Development Division, ASIAN, Inc.

Good morning, Mister Chairman and distinguished members of the Committee. My name is WILSON CHANG and I am appearing today in lieu of Mr. Harold Yee, President of ASIAN, Inc.

ASIAN, Inc. is a non-profit organization, providing research and technical assistance to improve the economic and social conditions of the Asian American communities in the San Francisco Bay Area. Some of our research findings and our technical assistance indeed impact a much broader area, including the national level. ASIAN, Inc. has been invited to testify before this Committee in the past and we welcome the opportunity to once again provide testimony on a subject matter that concerns the welfare of Asian small businesses.

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ASIAN, Inc. has been invited to submit comments on H.R. 863, a bill amending the Capital Ownership Development Program of the Small Business Act. Before I speak on the particulars of the legislation, I would like to give some background on the state of Asian American business development, with the emphasis on federal assistance to minority business development.

In the past seventeen years of Federal initiative and assistance to minority business development, there has been a concerted effort to develop a business development infrastructure to focus and leverage resources within the Black, Hispanic and Native American business communities. No such program or effort was provided for the Asian community. Without the leadership and the Federal resources provided to other minority groups, the Asian Americans have been excluded in the overall minority business development strategy. This exclusion reached its lowest point in the deliberate exclusion of Asian Americans in Public Law 95-507. As the staff of the Committee said, " We didn't know any Asians to invite to testify." Of course that problem has been rectified and Asians have been reinstated into the program. However, let us review the few bones that have been tossed to the Asian American business community, prior to Public L 95-507 and post.

Minority Business Development Agency (MBDA)

In the past decade (1972 to 1982) MBDA has awarded over $400 million in grants and contracts to Black, Hispanic, Native Americans, Asian American, local and state governments and even majority firms to provide management and technical assistance and other business development services

to the minority business community. Although Asians represent over 20% of the minority business population, Asians have received less than $3 million of assistance in the entire ten years!! Less than 1 percent of $400 million. As a basis of comparison, the Native Americans received over $15 million, yet they comprise 1% of the minority business community.

Who gets served is determined by who does the serving. There are no Asian Americans in any policy or program directing positions in MBDA. Out of the recent business development center awards, only one of the one hundred went to an Asian firm. That BDC is in Hawaii.

We look forward to testifying on H.R. 1158.

Small Business Administration, Minority Small Business/ Capital Ownership Development Program

Following Public Law 95-507, the SBA awarded over $30 million in 7(j) contracts, from 1979 to 1982, to various minority and majority firms and organizations to assist firms participating in the 8(a) program. Not one cent has been awarded to any Asian business development organization or effort to assist the Asian business community.

We recognize and appreciate the sensitivity of the Committee in calling attention in its December report on the 8(a) program to the lack of effort on the part of SBA to addressing the lack of participation by Asian American firms in the 8(a) program.

There are approximately 100 Asian firms in the 8(a) program today, representing about 5% of the total portfolio. About 50 of these firms are in Hawaii, where the district director is an Asian. There are 22 in San Francisco, 6 in Los Angeles, about 10 in Utah, 10 here in Washington and the rest are scattered throughout the rest of the nation. One of the twenty-three firms selected to be graduated by the SBA is an Asian firm.

The record clearly shows that Asians are not benefiting equitably in the 8(a) program: either in number of firms participating in the program or in terms of firms receiving management and technical assistance, business development expenses or advance payment assistance, or even in contract support.

In preparation for presenting this testimony, ASIAN, Inc. consulted with several Asian trade associations in the Bay Area: the United Asian Contractors Association, the Asian American Architects Engineers, whose president, Alvin Joe, will also be presenting testimony today, the Asian American Manufacturers Association and the Council of Asian American Business Associations. Thus, the testimony given today is the compilation of concerns, thoughts and experiences of the Asian business community in the San Francisco Bay Area, particularly of firms participating in the 8(a) program.

I spoke with ten of the twenty-two Asian firms in the San Francisco district to solicit their comments on their experiences in the 8(a) program. Many of them did not receive any 8(a) contract support in 1982. Of the four construction firms I spoke with, one has a $500,000 contract, another has only $90,000, the other two none. Of the three high-technology firms, one will be receiving about $600,000 this year, but the other two only foresee about $50,000 each. Needless to

say, these firms were very discouraged about the 8(a) program. I intend to conduct a thorough review of the record of assistance to these firms when I return to San Francisco and to then meet with the appropriate SBA officials to address this distressing situation.

Now, to present our comments on H.R. 863.

We support the concept of establishing predetermined "criteria of competitiveness" for financial, management and marketing functions so that the progress toward competitiveness can be measured. The concept calls for a balanced approach to the development of the firm. It focuses on the need to utilize a more comprehensive business development strategy than heretofore demonstrated in the 8(a) program today. Rather than focusing on the date which the firm is graduated or terminated, the concept calls for a measurement of success, its achievement of criteria of competitiveness, as the determinant for program separation. As a consequence, the degree and intensity of assistance from SBA to the 8(a) firm would increase through concentration on helping the firm become more profitable, to increasing its management capabilities and to expanding its markets beyond that of the sheltered 8(a) contracts, in addition to its procurement activities. Therefore, participation in the 8(a) program will become an intensive growing period that gives greater assurance that firms graduating from the program will truly be competitive in the mainstream. This was the the promise of Public Law 95-507 and this bill provides the fine tuning to reach that goal.

The 8(a) program is a self-elective program. With the limited resources that SBA possesses, the firms participating should be high potential, economically ambitious companies that want to exceed small business standards. Entry standards should be sufficiently high enough to reflect the realities of performing federal contracts and competing in the open market. We envision a dynamic program where minority firms will leverage their participation in these sheltered markets into solid foundations from which to launch their assault on the competitive marketplace. The criteria of competitiveness must be set at levels comparable to efficient firms competitive in the mainstream. Within this conceptual framework, we will address the specific provisions for graduation and termination.

We support the 85% average and the 75% minimum completion levels for graduation. Given the comprehensive approach in measuring financial,management and marketing capabilities, the firm is more roundly prepared for competition in the open market. Additionally, we are confident that the set of criteria of competitiveness will be thorough enough to ensure that 75% completion will be adequate preparation. However, we believe that there must be some form of incentive to graduate and or disincentive to remain in the program. To rely solely on the goodwill of the firm to leave the 8(a) sheltered markets is contrary to past behavior.

Thus we turn our attention to the termination provisions. We suggest that the annual evaluation of progress take into consideration and make appropriate adjustments for slippage in achievement of annual criteria attributable to circumstances beyond the control of the 8(a) firm. Among these are ineffective assistance from SBA, changes in economic

conditions nationally or regionally, and inflation. There is a moral obligation to allow the firm to rework its business plan and criteria of competitiveness if events occur, of no fault of the firm, to hamper its development. Given these adjustments however, we would like to see that an average of at least 50% of its criteria of competitiveness, adjusted as described above, be achieved in any given year. We believe that the proposed level of 25% does not challenge the firm to compete, even if it is with itself. In keeping with this philosophy, we feel that the level for three consecutive years should be at least 30% more than the average of such criteria achieved in the immediately preceding fiscal year. Again, we must reiterate, these figures are based on the adjusted goals.

On the matter of due process, we agree.

On the issue of exempting 8(a) contracts in computing the size of the firm, we agree with this sheltered industry concept. However, we believe that such growth of the firm beyond the small business size standards must be considered deliberate and provided for in the criteria of competitiveness.

In conclusion, we support this amendment to the Capital Ownership Development Program, There is a need for a program that is specifically tailored to bring minority firms into the mainstream of competition. This has been the charge to the 8(a) program and now this amendment provides the avenues for both the SBA and the 8(a) firms to work together to reach that goal.

We appreciate the opportunity to make this presentation before this Congressional Committee.

Mr. MITCHELL. Mr. Braddock, thank you for being here.

TESTIMONY OF CLARENCE BRADDOCK, PRESIDENT, THE BLACK PRESIDENTS' ROUNDTABLE

Mr. BRADDOCK. Good morning, Congressman Mitchell.

I am Clarence Braddock, the president of the Black Presidents' Roundtable, the organization of the presidents of over 200 black-owned and operated firms.

I am also the president of Automated Sciences Group, Inc., an engineering services and computer related analysis firm.

I have submitted copies of this statement for the record.

Mr. MITCHELL. Yes.

Mr. BRADDOCK. And I may not read it completely.

Mr. MITCHELL. Your entire statement will appear in the record.

Mr. BRADDOCK. OK, thank you.

I think as a kind of opening comment, I have had an opportunity to view the 8(a) program from, I think, two interesting perspectives.

For 7 years I was with the U.S. Department of Transportation, working very hard to get contracts into the 8(a) program, and into the minority firms.

I left there in 1979, and am now running a company trying to get the Government to push contracts into 8(a) firms, and I feel a great sense of déjà vu because not much has changed.

But we do appreciate this opportunity to offer testimony relative to H.R. 863, and we certainly congratulate you and your committee on your dedicated efforts on behalf of small and small minority businesses.

The Black Presidents' Roundtable has previously appeared before this committee, and has maintained a continuous dialog with the committee staff.

On the 25th of February, I think it was, I testified before the Senate Small Business Committee, at that time sitting again beside Steve, and some of what I will say in my opening statement will be a repeat of what I gave at that meeting.

The Black Presidents' Roundtable remains very concerned about the ineffectiveness of legislatively mandated programs to assist the small business community in general, and the small minority business community in particular.

We are also concerned about the continuing failure of Federal agencies charged with the responsibility for program implementation to effectively address and solve those problems and issues which are central to the development of small minority business enterprises.

The Federal Government, in our judgment, is continuing to lead minority business programs down the road to disaster.

This is caused by several overlapping problems, the most visible of which is the fact that the 8(a) program which is the most effective mechanism developed to date to increase the market share and viable participation of minority Americans in the U.S. economic mainstream has abandoned its legislative and mandated purpose to promote the competitive viability of minority-owned firms.

The need for MBE's to become competitive in and have access to the Government marketplace is a critical complement to the very gradual penetration of MBE's into the private sector.

Nobody likes to discuss the issue of discrimination in the marketplace, but careful analysis of the facts show that for minority entrepreneurs it just will not go away.

A 10-year analysis, for example, of the Black Enterprise magazine's top 100 firms, illustrates that the most successful black-owned firms have not achieved their success from competitive Federal Government procurements.

On the contrary, the 1982 listing of the Black Enterprise 100 indicated that over 33 percent were subsidiaries of or distributors for the Fortune 500 companies, and that included 29 auto dealerships.

Over 25 percent were participants in Government-supported sheltered market programs. Twenty percent were selling their products primarily to black consumer markets, and 17 percent were primarily selling goods and services to the private sector.

Over the 10-year history of the Black Enterprise 100, not a single major success story has been identified of a black-owned firm which generated the majority of its sales from the competitive Federal Government procurements.

This shocking data underscores the importance of a Government commitment to programmatically revitalize the concept of competitive viability, as well as to open the doors of Government contracts to minority firms that are not in the sheltered market program.

The SBA's role is to act as an advocate to all small businesses and implement programs to foster the development of small business enterprises.

The SBA programs which have the greatest potential for fostering the development of small minority businesses are the section 8(a) program and the subcontracting program which was mandated by section 211 of Public Law 95-507.

The 8(a) program provides an effective mechanism for providing small minority firms with access to an otherwise larger, inaccessible Federal Government procurement marketplace, and result in opportunities to convince otherwise skeptical Government agencies that minority firms can perform effectively.

I would like to stress that point in two dimensions. One is that there is a schizophrenia that has surrounded the 8(a) program since its inception, and that is the question of MIN assistance programs or MIA development programs; and those are two starkly different dimensions.

If it is to be an assistance program, then perhaps some of the history would make some sense, in that if you want to conduct it, as you might conduct a supermarket spree, would I get an hour to go to the market with my basket, do the best I can and get back out and maybe eat for 2 days, and not be any better off.

Or is it to be a program that in recognition of the fact that there is discrimination in the marketplace, there are firms, minority firms, which are competent to perform.

And the goal of the program is to provide a mechanism whereby those firms could have an opportunity to demonstrate their capabilities, to grow and reach some degree of competitive viability, and have a chance in the marketplace.

If that is to be the nature of the program, then things like participation terms do not make much sense, and I will speak more to that later.

With respect to the 8(a) program, and it has a great potential. However, the SBA program which has rated a greater potential for stifling the development of small minority business is the fixed program participation term implemented by SBA in response to Public Law 96-41.

These FPPT's have and are having the effect of removing from the 8(a) program those very firms which are closest to developing credibility within the Federal marketplace and have the greatest potential for achieving competitive viability.

Now, I would like to speak to the major issues addressed by H.R. 863, with respect to the due process of guarantee for 8(a) firms criteria for graduation and termination from the 8(a) programs, and the applicability of size standards to 8(a) firms.

The Black Presidents' Roundtable wholeheartedly concurs with those provisions of the bill which would provide that there are only three ways to exit the 8(a) program, that is, voluntary withdrawal, termination, or graduation, with the provision that at the election of 8(a) firms, termination and graduation proceedings may be due process proceedings pursuant to the hearing requirements of the Administrative Procedure Act.

With respect to the proposed termination and graduation criteria, the Black Presidents' Roundtable agrees with the provisions of the bill, and I would like also to make the following comments and recommendations.

The current SBA fixed program participation period, which limits the length of time for participation in the 8(a) program, was designed to allow a larger number of firms to participate by keeping the total number of participants down to a level which the SBA staff can manage.

Both objectives are quite reasonable on the surface. However, governmentwide efforts to challenge the bulk of all minority business procurement through the 8(a) program, through the 8(a) firms in the program, by increasing the turnover rate of 8(a) firms can only be achieved at the expense of the quality of management participant firms can develop while in the program.

Yet, the management experiences provided to the 8(a) participants is perceived as one of its most important contributions to minority business development.

Developing a small minority business cannot be rushed. That is really a paraphrase of a statement that says that "The development of a business cannot be rushed."

The 8(a) firms cannot be expected to achieve competitive viability in that 3- to 5-year period, when convincing data shows that nonminority firms require 15 to 20 years to mature.

The recent abrupt termination of 23 top 8(a) firms prior to a realistic assessment of size standards or competitive viability defeats the objective of the programs and may permanently injure some of the minority business fastest growing companies.

In the minority community there is always a lot of talk about role models. We need role models; yet in the context of this 8(a) program, the removal of these 23 companies as they begin to

achieve viability, there are about another 400 firms, which will probably reach that magic goal of termination within the coming year. But where will the incentive come from for minorities to enter the business world at all?

The criteria for graduation from the 8(a) program should be rational, and obviously desirable for 8(a) firm managers to aggressively pursue. I stumble over the word "rational" because sometimes I look at the SBA, and I can't get the word out. [Laughter.]

Under no circumstances should the success be condemned, and apparently, that is what we are seeing.

The Black Presidents' Roundtable again would like to recommend, and this has been recommended by the roundtable, and by members of the roundtable for the last 3, 4, or 5 years, the concept of a two-tier 8(a) program.

The tier one would function much like the existing 8(a) program, with all tier one participants being eligible if not required to participate in all forms of financial, technical, and contract marketing assistance.

Tier one firms should have a maximum of 10 years to graduate to tier two. Existing 8(a) firms that have been in the program for more than 8 years, and there is always a question, "Well, what do we do about those?" but are not yet eligible for tier two, should have a maximum of 3 years, and a minimum of 2 years to graduate to tier two.

One of the purposes of this would be to address the age-old SBA argument which kind of led to the fixed participation term that "We don't have enough resources."

Yet, if you look across the history of the 8(a) program, what you will find, that for most of the fairly successful firms, because they are not very much of a burden on the SBA. These are firms which can do their own marketing. They are fairly well versed in financial matters. They don't get loans from the SBA. They look upon the SBA as a certifying industry which is back to the 8(a) status, and a contracting agency.

That raises the question of another myth about the 8(a) program, and the myth is in two dimensions. One is that all firms in the program are babies and need assistance, and they are a drain on the SBA and one can only suffer so many babies at a time.

That is not true. There are many firms who came into the 8(a) program, because it existed and gave them an opportunity to become viable, an opportunity which they did not have out into the competitive marketplace.

There are firms which entered the 8(a) program who have these same kinds of business expertise that other firms have.

The other myth that occurs is that there are firms in the program which have been allowed to stay in there too long, and they clutter up the program, and they siphon off all of the SBA's resources.

I suggest that neither of those are true, but in order to get over that myth, if they would look at this two-tier program, one would be a program for those firms which are clearly identified as in an embryonic stage, and that raises a question of the fact that the SBA does not really have any rational entry criteria.

And there really should be a criteria that would probably reject more firms than it accepted.

But that gets us back to the concept of the 8(a) program being an assistance or a welfare program, that everybody should have access to if but for a short period of time.

Tier 2 firms should be limited to those firms passing some—what you might call a tier 1 viability test. Tier 2 firms would receive no referral contracts from the SBA but would be limited to self-marketing or contract award because the firm convinced the Federal agency of the quality of its track record, and its ability to perform.

In those instances, those contracts could be negotiated on a sole source 8(a) basis.

On that point, the experience of my company and some others has been that there would be a lot more receptivity on the part of some agencies to contract with an 8(a) company. If that agency could contract directly with that company instead of having to go through with the 8(a) process, that resistance was kind of exacerbated by the fact that with the advent of the fixed participation term and the desire of the SBA to share the wealth in a number of cases where a firm has self-marketed an agency, had been selected, the offering letter had been sent to the SBA. In SBA's judgment that firm either was doing too well or other firms not doing as well, either refused to accept that offering for that firm, or went back to the agency saying "You will also have to consider these other firms."

In some cases, the result was that the agency withdrew the requirement from the 8(a) program entirely.

So, one of the recommendations that we made to the Senate, and we would make here, is again, that some consideration should be given that the SBA would be in the role of certifying that a company is: 8(a) requiring the submittal of all the necessary reports and documents that would certify that they were still eligible, but to get them out of the contract referral in the tier 2 case, and maybe out of being the prime contractor in all cases.

Depending on a particular industry, 8(a) firms should be given a negotiated maximum, but not less than 5 years, and not more than 10 years participation in tier 2.

The criteria for achieving viability should be defined by SBA in a manner which reflects the meaning of the term in the subjective—private sector financial market.

If a firm cannot obtain the type of financing it needs at the state of the development it is in, it is not viable.

The criteria should not be complicated. For example, some of the following criteria could be recommended, in terms of profitability. A firm that cannot demonstrate an ability to make a profit cannot attract capital. And profitability has not been a major factor in 8(a) criteria.

It is recommended that firms should not be allowed to ascend to the second tier until they have reported a profit for 2 consecutive years as reflected in their financial statement.

With respect to sales, in order to become competitive 8(a) firms, they must demonstrate an ability to acquire non-8(a) sales. It is recommended that the firm should not be allowed to ascend to this

second tier until they have recorded a negotiated non-8(a) sales level of 5 to 15 percent of total sales.

Firms also should not be advanced to tier 2 until the company sales have exceeded 50 percent of the revised and realistic size standards for these 2 consecutive years.

The final stage of development in the maturity of the firm to a state of viability is the successful attraction of equity capital, and obviously only providers of equity should be or can fairly assess the potential of firms to acquire equity.

It would be recommended that all 8(a) firms in tier 2 be evaluated by any SBA funded MESBIC or small business investment company each year, and inform their deficiencies which must be corrected and norms which must be achieved before equity capital would be a realistic possibility.

And once a firm completes a public equity offering, it could be graduated from the program within 6 months. One point I would like to stress is that the SBA should compile and widely disseminate to all Government procurement offices, to the appropriate medium to all 8(a) firm participants. A document or documents clearly explain the program is cost effective in its accomplishments, and its present or future benefits which is a sign again, there is a wall of lack of information that exists in our judgment between the SBA, and the Congress, but certainly between the SBA and the agencies. The agencies are very unclear as I heard mention here as to what the fixed participation term really means; what does graduation mean; can we negotiate with the firm now whose graduation date is a year in the future, for a 3- or 4-year contract with some assurance that that firm will be able to keep that contract?

That is not very clear at all, and in some cases is jeopardizing and removing contract opportunities from some 8(a) firms.

One other very important point is that termination from the program should not be based on a change in the economic or social disadvantage of the owner. There are many cases where a determination has been made that the owner has reached some stage of a competitive viability based upon his own personal financial statement, and therefore the firm should be out.

The economic and social disadvantage should be the basis for initial eligibility only, not for retention. Once in the program, the objective should be to allow the firm to become viable so it can make the same types of contributions to the economy made by nonminority small business. If I am a nonminority small business, nobody ever asks me what kind of car I drive, or how much money I make.

On the issue of size standards in the provisions of H.R. 863 for excluding 8(a) sales and employment in size determination, the BPR applauds the committee for its recognition of a very important fact: That minority firms with subject to termination from the 8(a) program for exceeding current size standards, are placed in the position of immediately failing if their size has been achieved solely through 8(a) contracts.

That is a very serious issue because if you look across the 8(a) contract offering, there is a very insidious event that occurred, which I expressed when I was in the Government. There are a lot of agencies who will "agree to the 8(a)" and say, "Yeah, we'll do

it." They will carefully select certain kinds of programs, certain kinds of contracts. That will satisfy our 8(a) requirements for this year. It raises spurious questions as to what are the quality of the offering, because in order for any business to survive you have to decide what it is you do best, if there is a market for it, and try to get into business in that market.

So that in many cases the firms in the 8(a) program are denied a normal business judgment as to be selective in terms of contracts that I want to take.

My company, and several others, I know, would probably have done twice as well as we did last year on contracts that would have been no value to us beyond the 8(a) program; would not have added to our product line; would not have given us any credibility whatsoever.

So, the thing we have got to address is to improve the quality of the offering in terms of some of the more engineering oriented, or you can call them high-tech contracts and certainly access to more of the multiyear contracts.

With respect to the size standards, and we concur with the legislation on that, we would suggest, however, that the larger issue is the validity of the current size standards for all small businesses have not kept up with inflation, has tended to get smaller and smaller; the current plans, and as I understand it, is to go from dollar size standards to employment size standards; but if you were to look at some statistics and with the proliferation of more and more larger businesses, that what we are headed to is a stratified market, which you are going to have a cadre of small businesses very tightly screened by low size standards.

As they move out of that, they are going to be like a baby thrown out of a nest into the jungle with, as Mr. Denlinger said, there is no transition. There is no criteria for medium-sized business.

So, either we have to think about that, and you don't want to lower the size standards to constrain the small business population; you want to raise the size standards to help pace with the larger businesses.

We feel that SBA size standards should be—could be revised to reflect some reasonable combination of standards of some studies that we have looked at of the Heller Small Business Institute, which speaks of criteria which says a business is no longer small after it reaches about $50 million in market capitalization.

Or the National Association of Security Dealers, which says that up to $50 million also; and even the SBA task force of 1977 on venture and equity capital says that you are small until you get up to about $60 million in sales or after about 15 or 20 years.

Mr. Chairman, I thank you for the opportunity to appear before your committee, and I will be pleased to answer any of your questions that you may have.

[Mr. Braddock's prepared statement follows:]

Prepared Statement of Clarence Braddock, President, The Black Presidents' Roundtable

Mr. Chairman, I am Clarence Braddock, President of the Black Presidents' Roundtable, an organization of the presidents of over 200 black-owned and operated firms. I am also the president of Automated Sciences Group, Inc., an engineering services and computer related analysis firm. Mr. Chairman we appreciate this opportunity to offer testimony relating to H.R.863. We congratulate you and your committee on your dedicated efforts on behalf of small and small minority businesses. We particularly congratulate your efforts and yourself in co-sponsoring the amendment to the recently passed Surface Transportation Act with its 10 percent set-aside provision for small and small minority businesses.

The Black Presidents' Roundtable has previously appeared before this committee and has maintained continuos dialogue with committee staff members regarding the problems confronting small minority businesses in their struggle to achieve competitive viability. This committee has been extremely responsive to our requests for discussion and supportive of our efforts to solve our problems.

However, the Black Presidents' Roundtable remains very concerned about the ineffectiveness of legislatively mandated programs to assist the small business community in general and the small minority business community in particular. We are also concerned about the continuing failure of Federal agencies, charged with responsibility for program implementation, to effectively address and solve those problems and issues central to the development of small minority business enterprises.

The Federal Government is leading minority business programs down the road to disaster. This is caused by several overlapping problems, the most visible of which is the fact that the 8(a) program, the most effective federal mechanism developed to-date to increase the market share and viable participation of minority Americans in the U.S. economic mainstream has abandoned its

legislatively man-dated purpose to promote the competitive viability of minority-owned firms. The need for MBEs to become competitive in and have access to the government marketplace is a critical complement to the very gradual penetration of MBEs into the private sector.

Nobody likes to discuss the issue of discrimination in the marketplace, but careful analysis of the facts show that for minority entrepreneurs, it just will not go away. A ten-year analysis of Black Enterprise's top 100 firms illustrates that the most successful black-owned firms have not achieved their success from competitive federal government procurements. On the contrary, the 1982 listing of the BE 100 indicated that over 33 percent were subsidiaries of or distributors for Fortune 500 companies (including 29 auto dealerships), over 25 percent were participants in government-supported sheltered market programs, 20 percent were selling their products primarily to black consumer markets and 17 percent were primarily selling goods and services to the private sector.

Over the ten year history of the BE 100 listing, not a single major success story as been identified of a black-owned firm which generated the majority of its sales from competitive federal government procurements. This shocking data underscores the importance of a government commitment to programmatically revitalize the concept of "competitive viability" as well as to open the doors of government contracts to minority firms that are not in the sheltered-market programs.

The Small Business Administation's (SBA) role is to act as an advocate for all small businesses and to implement programs to foster the development of small business enterprises.

The SBA programs which have the greatest potential for fostering the development of small minority businesses are the Section 8(a) program andthe subcontracting program mandated by Section 211 of Public Law 95-507. The 8(a) program provides an effective mechanism for providing small minority firms with access to an otherwise largely inaccessible federal government porcurement marketplace and resultant opportunities to convince otherwise skeptical government agencies that minority firms can perform effectively. The 8(a) program also provides for a variety of technical and financial assistance to minority firms to assist them in increasing sales and income, resolving bonding problems and improving credit capabilities. However, the SBA program which has created a great potential for stifling the development of small minority business is the Fixed Program Participation Term (FPPT) implemented by the SBA in response to Public Law 96-481. These FPPTs are having the effect of removing from the 8(a) program those firms which are closest to developing credibility and have the greatest potential for achieving competitive viability.

The Section 211 subcontracting provisions of PL 95-507 have the same potential with respect to providing minority firms with access to development of credibility within the federal prime contractors sector. However, we have observed a significant increase in the number of federal prime contractors that have been found in some manner of noncompliance with PL 95-507 and thus the potential is not yet realized.

I would now like to speak to the major issues addressed by H.R. 863. These issues are (1) due process guarantees for 8(a) firms, (2) criteria for graduation/termination from the 8(a) program and, (3) applicability of size standards to 8(a) firms.

The Black Presidents' Roundtable wholeheartedly concurs with provision of H.R. 863 which would provide that there are only

three ways to exit the 8(a) program, i.e., voluntary withdrawal, termination or graduation with the provision that at the election of the 8(a) firm termination or graduation proceeding may be "due process" proceedings pursuant to the hearing requirement of the Administrative Procedure Act.

With respect to the proposed termination/graduation criteria the BPR agrees with the provisions of H.R. 863 and would like to also make the following comments and recommendations:

- The current SBA fixed program participation term which limits the length of time for participation in the 8(a) program was designed to allow a larger number of firms to participate while keeping the total number of participants down to a level which the SBA staff can manage. Both objectives are quite reasonable on the surface. However, governmentwide efforts to channel the bulk of all minority business procurements through the 8(a) firms in the program by increasing the turnover rate of 8(a) firms can only be achieved at the expense of the quality of management participant firms can develop while in the program. Yet, the management experiences provided to 8(a) participants is preceived as one of its most important contributions to minority business development. Developing a small minority business cannot be rushed. 8(a) firms cannot be expected to achieve competitive viability in a three to five year period when convincing data shows that nonminority firms require 15 to 20 years to mature.

- The recent abrupt termination of 23 top 8(a) firms prior to a realistic assessment of size standard or "competitive viability" defeats the objectives of the program and may permanently injure some of the minority business community's fastest growing companies.

- Criteria for graduation from the 8(a) program should be rational and obviously desirable for 8(a) firm managers to aggressively pursue. Under no circumstances should success be condemned. A two-tier program is recommended:

  --Tier One would function much like the existing 8(a) program with all Tier One participants being eligible for all forms of financial, technical and contract marketing assistant currently provided to 8(a) firms. Tier One firms should have a maximum of ten years to graduate to Tier Two. Existing 8(a) firms that have been in the program more than eight years but are not yet eligible for Tier Two should have a mximum of three years and a minumum of two years to graduate to Tier Two.

  --Tier Two firms should be limited to those firms passing the Tier One viability tests as described below. Tier Two firms should receive no "referral" 8(a) set-aside contracts from SBA but should be limited to self-marketing on contracts awarded because the firm convinced a federal agency of the quality of its track record and its ability to perform, just as "competitive" firms do. In those instances the contracts could be negotiated on a sole-source 8(a) basis, again, in a like manner to negotiated contracts by competitive firms. Additionally, when an agency is assessing the qualification of more than one Tier Two firm, limited competition among Tier Two firms would be allowed. Depending on the industry, 8(a) firms should be given a negotated maximum of not less than five years and not more than ten years participation in Tier Two at the discretion of SBA.

- The criteria for achieving "viability" should be defined by SBA in a manner which reflects the meaning of the term in the "subjective" private sector financial markets. If a firm cannot obtain the type of financing it needs at the stage of development it is in, it is not viable. The criteria should not be complicated. The following criteria are recommended.

  --Profitability: A firm that cannot demonstrate an ability to make a profit cannot attract capital. Profitability has not been a major factor in 8(a) criteria. It is recommended that firms should not be allowed to ascend to the second tier until they have recorded a profit for two consecutive years, as reflected in certified financial statements.

  --Sales: In order to become "competitive," 8(a) firms must demonstrate an ability to acquire non-8(a) sales. It is recommended that firms should not be allowed to ascend to the second tier until they have recorded a negotiated non-8(a) sales level of five to 25 percent of total sales (at the discretion of SBA) as reflected in certified financial statements.

  Firms also should be ineligible for Tier Two until company sales have exceeded 50 percent of "revised and realistic" size standards for two consecutive years.

  --Access to Capital: The final stage of development in the maturity of a firm to the state of viability is the success attraction of equity capital. Only providers of equity can fairly assess the potential of firms to acquire equity. It is recommended that all 8(a) firms in Tier Two be evaluated by any SBA-funded MESBIC or

SBIC each year and informed of deficiencies which must be corrected and norms which must be achieved before equity capital would be a realistic possibility. Once a firm completes a public equity offering, it must be graduated from the program within six months.

- SBA should compile and widely disseminate to all government procurement offices, to the appropriate media and to all 8(a) firm participants, a document which clearly explains the program, its cost-effectiveness, its accomplishments and its present and future benefits to society.

- Termination from the program should not be based on a change in the "economic or social disadvantage" of the owner. This discourages the 8(a) entrepreneur from making profits, increasing personal net worth and a variety of other impractical expectations. The economic and social disadvantage should be the basis for initial eligibility only, not retention. Once in the program, the objective should be to allow the firm to become viable so that it can make the same types of contributions to the economy made by nonminority small businesses.

It is intended that the above findings, conclusions and recommedations can be the stimulus for extended discussion and analysis among minority business owners, and state, local and federal government policy-makers, as well as other interested parties.

On the issue of size standards and the provisions of H.R. 863 for excluding 8(a) sales and employment in size determination the BPR applauds the committee for its recognition of the fact that minority firms which are subject to termination from the 8(a) programs for exceeding current size standards are placed in the position of immediately failing if their size has been achieved

solely through 8(a) contracts. The BPR would also suggest that the larger issue is the question of the validity of current size standards for all small businesses and would recommend that:

- o SBA size standards should be revised to reflect a reasonable combination of the standards of the:

  --Heller Small Business Institute of The Wharton School, University of Pennsylvania (up to $50 million in market capitalization)

  --The National Association of Securities Dealers (up to $50 million in market capitalization)

  --The 1977 SBA Task Force on Venture and Equity Capital For Small Business (up to $60 million in sales and 15 to 20 years for "maturity").

Mr. Chairman, thank you for the opportunity to appear before your committee. I would be pleased to answer any questions you or your colleagues may have.

Mr. MITCHELL. Thank you for very excellent testimony. I could not help but wonder in my mind as we received this testimony that had SBA—when it went through all of these wild gyrations in terms of policy changes—had it simply consulted with people like you, we wouldn't have any problem today.

We wouldn't have to have this hearing this morning. It is just amazing that—I think in past testimony it was indicated—there was little or no consultation with the small minority business community, and what you have done, really is to set up a system that would be very effective, very fair, very equitable, and it just seems to me had there been any kind of consultation and acceptance of your ideas, we simply would not be facing the problems we confront today.

I guess that really the criteria for success of the 8(a) capital ownership development program, was spelled out by you, Mr. Braddock—that is, profitability, sales, access to capital, and that's about it, maybe—those three—would you gentlemen, all of the members of the panel fairly well accept that those ought to be the criteria for measuring the success of the capital ownership development program?

Mr. THOMAS. To include also bonding capability for contractors.

Mr. MITCHELL. OK.

Mr. THOMAS. Bonding.

Mr. MITCHELL. Any other criteria?

[No response.]

Mr. MITCHELL. If not, then just give me a quick reaction. Has this fixed program participation term helped or hindered in terms of achieving those objectives of profitability, sales, access to capital, and bonding?

Mr. CHANG. I should add, I think, Mr. Denlinger pointed out very clearly, the whole change in terms of management, again, from a management technology to——

Mr. MITCHELL. Yes. Let's use those five criteria, just as a working strategy. I'll put it another way. In my opinion, the fixed program participation term mitigates against all five of those criteria—I see the heads nodding in agreement, and I assume that there is general agreement on that.

Now, Mr. Thomas, you indicated that the fixed program participation term caused a contractor to run into some difficulty because the agency he was working with said, "Where are you in your fixed program participation term?"

And I can understand it; that is a legitimate question. I wouldn't want to enter into a contract with someone knowing that maybe next week they are out of the program.

Mr. THOMAS. It is great hesitance by the contracting officer—it happened out in Seattle.

Mr. MITCHELL. Yes; and I wanted to approach it another way. Have you had any experience with the SBA field personnel themselves? Are they less inclined to engage in business development activity if they know a firm has a FPPT?

Has anyone had any experience with SBA field people?

Yes, Mr. Braddock.

Mr. BRADDOCK. Well, I guess it is kind of a mixed bag. I just came back from a trip from Los Angeles, and some of the SBA

people out there are not going as hard for some of the firms that we feel have a short participation term.

In some other field organizations, it has not changed, and I think that the most astute observation I can make is that in a great many instances the regions and the districts don't know what to do.

Mr. MITCHELL. Yes.

Mr. BRADDOCK. There is a lack of clarity around what does a fixed participation term mean. There is always—there is a real problem in that if it means that I can enter contracts up until the day before I graduate and carry those contracts with me—that's one thing. If it means that I can enter into the contracts up until that day but can't carry them with me, that is something else.

Now, going back to my comment on the need for some clarity, for some guidelines, it is just a mixed bag. What has happened, and we forget, that when we testified at the hearings on this participation term, and immediately after, there were many firms who complained that they were denied lines of credit.

They had office leases which were up for renewal, which were not renewed, and that paranoia—the whole aura of the fixed participation term is like announcing that somebody has cancer or in these more fashionable times, herpes.

It is a real millstone. Noboby wants to deal with it.

Mr. DENLINGER. I have a comment on that.

Mr. MITCHELL. Well, let me recover from that last statement. [Laughter.]

Yes, Mr. Denlinger, go ahead.

Mr. DENLINGER. The feeling I get is that it isn't so much clearly that they are favoring firms that haven't received support, or favoring those that have come in close to their fixed term or graduation. It is more of a feeling of a touch of helplessness that there is not enough contract support and the BDS is out there in the SBA system, just don't have any power over that problem. They are not being stingy; they simply don't have control over the flow of requirements so that they could direct a meaningful flow to companies that are about to graduate or companies that are just coming in.

I think it goes back to the issue of SBA not having significant handle on how to capture requirements in a systematic way to support its portfolio company.

Mr. BRADDOCK. I would differ with that statement in the degree that there was some data available, I can't cite the source right now, that last year the SBA had turned back some number of requirements that represented to my mind a significant amount of business.

Now, it just seems to me incredible that on the one hand, that we say they are confused, and that they don't have access to the requirements, but at the same time they turn back to not only requirements to the agencies but resources to the Congress.

Mr. MITCHELL. Yes; I was going to take slight issue with your statement too. Not only from the direction in which he came, but also in terms of the number of contract offerings which have been submitted to SBA by the various agencies of Government which SBA has either not acted on or has protracted the decision on those

submissions to the point that the agencies have become frustrated and said, "Look, we have waited 8 months, and you haven't done anything. We are taking it back."

I would hope that maybe the staff can do a complete comprehensive study on that.

Mr. THOMAS. I think Steve was trying to point out that there is a tremendous amount of indecision out there that was causing this kind of problem by the people out there.

Mr. MITCHELL. Yes. It is a threefold problem, really. There is some indecision, obviously, because clear-cut communications and directions are not sent out to people—that is No. 1.

No. 2, there is confusion because the SBA does not spend that which we give it; and, No. 3, it does not handle contract submissions from the other agencies in a very timely fashion.

In my opinion, the bottom line is, that once you get that fixed participation term, and you come within 6 months or a year of its ending, the door just closes. Period, and it closes flat in your face.

We have got to do something to correct that.

Mr. THOMAS. Can I draw you a quick pallet of the organization of resources?

We have had quite a bit of interplay with the Department of Transportation under the Railroad Revitalization Act. They have their own loan program, which only guarantees up to 75 percent of any loan. It is moving very nicely. A lot of takers, no real problem.

Bonding—they have been able to get one of the standard bondings to come in—Fireman's Fund—to run their program for them: To bond minority contractors under—with only a 50-percent guarantee.

Now, here is SBA that can get the standard; they had to get the specialty companies to come in—charge higher rates, in addition to—they give you 90 percent guarantee; and there are no takers.

Mr. MITCHELL. And in addition, SBA never exercised its bond waiver authority.

Mr. THOMAS. So, it shows there that there is one department that has a definitive agenda; they have clear concise standard procedures within the office, where people do know what is going on, and their program under the Railroad Revitalization Act is really moving. Where SBA has greater resources, but everything appears to be stymied.

Mr. MITCHELL. I think all four of you have spoken to my third area of inquiry. SBA says, on the average, that your term will be 3 years, and it raises the hoary argument that I have heard ad nauseum, that it has got to be 3 years to let more firms in.

But all four of you have spoken to the essential issues. It is not a matter of how many; it is a matter of quality. It is a matter of whether you are really becoming competitive.

So, the answer, it just seems to me, is, twofold, first the emphasis has got to be shifted from just numbers to quality.

And, No. 2, you can enhance the numbers of good quality firms that have a potential, if SBA had a little more advocacy. I don't think they are that tightly strapped for personnel. They can't be if they are reducing their personnel consistently. So it simply means that you could add on to the numbers and promote competitiveness if SBA were more aggressive in getting out to Interior, and DOD,

and the other agencies, and would say, "Look, double the number of contracts that you are offering."

Well, if I could just wave my magic wand and eliminate all the top administration in SBA and put you in there; would you be willing to take it over and give us——

[Laughter.]

Mr. MITCHELL. Gentlemen, it has been really very, very helpful. I don't know whether my colleague has questions or not.

But seriously, I am getting old, and I am getting frustrated, and darn it, it just seems to me that 2 years ago when they started all this foolishness about size standards and length of time, if they had just gone out and talked to people who were out there working with the businesses, it would have been so much easier for all of them.

Thank you, gentlemen. It has been very stimulating and effective testimony.

It is with some trepidation that I call on the second panel to come up. I say that facetiously. I have worked very closely with these gentlemen throughout my tenure in Congress, and I must say that collectively, and individually, all three of you have been of immeasurable help to my attempts to try to develop a good minority business program.

And I want to publicly thank all three of you. You, like me, have gotten a little grayer—some of you have—but it has been a long, hard fight, and I appreciate all the assistance that you have given us.

Mr. Theodore Adams, who is the president of Unified Industries; Mr. Ray Mott, president of Raven Systems; and Mr. Jerry Davis, president of Unified Services.

Mr. Adams, would you lead off, please.

PANEL CONSISTING OF THEODORE A. ADAMS, JR.; RAY MOTT; AND JERRY DAVIS, JR.

TESTIMONY OF THEODORE ADAMS, JR., PRESIDENT, UNIFIED INDUSTRIES, INC.

Mr. ADAMS. Mr. Chairman, members of the committee, as usual, I appreciate the opportunity to appear here, and present my views with respect to H.R. 863. This very important piece of legislation shouldn't be necessary, but unfortunately it is.

I would like my testimony put into the record, and I will not read it.

Mr. MITCHELL. Without objection, it will be submitted for the record, in its entirety.

[Mr. Adams' prepared statement follows:]

PREPARED STATEMENT OF THEODORE A. ADAMS, JR., PRESIDENT, UNIFIED INDUSTRIES, INC.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I APPRECIATE THE OPPORTUNITY TO APPEAR HERE TODAY AND PRESENT MY VIEWS WITH RESPECT TO H.R. 863. THIS VERY IMPORTANT PIECE OF LEGISLATION SHOULDN'T BE NECESSARY, BUT UNFORTUNATELY IT IS. I ALSO AM GOING TO TAKE THIS OPPORTUNITY TO SET THE RECORD STRAIGHT CONCERNING SOME OF THE EVENTS THAT TOOK PLACE LEADING UP TO THE FORCED DEPARTURE OF MY FIRM AND TWENTY OTHERS FROM THE 8(A) PROGRAM ON FEBRUARY 14, 1983.

THIS BILL EMPHASIZES THE COMPETITIVE DEVELOPMENT OF FIRMS, A CONCEPT THAT WAS SET FORTH IN P.L. 95-507 IN OCTOBER 1978, BUT WHICH SBA HAS CONVENIENTLY SEEN FIT TO IGNORE. HAD THIS LEGISLATION BEEN IN PLACE SEVERAL YEARS AGO, THE ADVERSARY RELATIONSHIP THAT DEVELOPED BETWEEN THE SBA AND THE 8(A) FIRMS THAT THE CURRENT SBA ADMINISTRATOR AND HIS PREDECESSOR HAD TARGETED FOR REMOVAL FROM THE PROGRAM, MAY NOT HAVE OCCURRED. I KNOW FIRSTHAND OF THIS SITUATION, BECAUSE MY FIRM WAS ONE OF THOSE HIGH UP ON THE SBA HIT LIST.

INITALLY, I WAS ONE OF 50 FIRMS. THEN I WAS ONE OF 40, AND FINALLY I BECAME ONE OF 21. THE CURRENT ADMINISTRATOR AND HIS PREDECESSOR WANTED US OUT OF THE PROGRAM, BECAUSE IN THEIR JUDGEMENT WE HAD BEEN IN THE PROGRAM TOO LONG. THEY WERE DETERMINED TO GET US ONE WAY OR ANOTHER, AND OF COURSE, THE QUESTION OF WHETHER ANY OF US WOULD BE ABLE TO SURVIVE IN OUR RESPECTIVE COMPETITIVE ARENAS WAS NEVER CONSIDERED.

THE SBA SIDE OF THE STORY IS BEING WIDELY CIRCULATED IN AN 11 PAGE ATTACHMENT TO A MEMORANDUM FROM THE SBA ADMINISTRATOR DATED FEBRUARY 9, 1983. IT IS NOT ADDRESSED TO ANYONE IN PARTICULAR,

BUT AMONG OTHER THINGS, IS BEING USED AS THE STANDARD RESPONSE TO ALL TYPES OF INQUIRIES.

HIS FIRST PARTIAL MISSTATEMENT HAS TO DO WITH HIS FEELING THAT 8(A) CONTRACTS ARE NONCOMPETITIVE. THEY ARE NONCOMPETITIVE IN THE SAME WAY AS SMALL BUSINESS "SET ASIDES," AND IN THE SAME WAY AS NORMAL NEGOTIATED PROCUREMENT. THE PERCENTAGE OF GOVERNMENT CONTRACTING THAT IS NEGOTIATED, THAT IS NONCOMPETITIVE, COULD BE AS HIGH AS 90 PERCENT. ALL OF MY CONTRACTS WERE COMPETITIVE FROM A TECHNICAL AND COST STANDPOINT AND WERE NEGOTIATED. I WANT TO EMPHASIZE THE WORD NEGOTIATED, BECAUSE A MISCONCEPTION IS THAT SBA HANDS OUT CONTRACTS INDISCRIMINATELY AND THAT EVERYTHING IS NONCOMPETITIVE. FIRST, SBA DOES NOT HAND OUT CONTRACTS. IN MOST CASES, CONTRACTS WERE RECEIVED BECAUSE THE FIRMS, INCLUDING MY OWN, SELF-MARKETED. WE KNEW OUR CAPABILITIES. ON OUR OWN INITIATIVE WE DETERMINED LEGITIMATE NEEDS OF THE GOVERNMENT THAT WE COULD FILL. THE 8(A) WORK WE PERFORMED WAS ONLY AWARDED TO US BECAUSE WE HAD DEMONSTRATED OUR TECHNICAL COMPETENCE AND THE PRICE WAS RIGHT. OUR CONTRACTS WERE NO DIFFERENT THAN ANY OTHER NEGOTIATED CONTRACTS BETWEEN THE GOVERNMENT AND THE MAJOR DEFENSE CONTRACTORS, WITH ONE EXCEPTION. WE DELIVERED ON TIME AND WITHIN BUDGET.

TO HIS CREDIT, THE ADMINISTRATOR ACKNOWLEDGES THAT P.L. 95-507 REDIRECTED THE 8(A) PROGRAM AND CHARGED SBA WITH HELPING 8(A) PARTICIPANTS NOT ONLY TO OBTAIN FEDERAL WORK, BUT TO ASSIST THEM IN BECOMING COMPETITIVE. IT IS NOT THAT SBA DIDN'T KNOW THAT CONGRESS HAD COMPETITIVENESS IN MIND BACK IN 1978, IT JUST CHOSE TO IGNORE THAT CONCEPT.

His memorandum also places blame on the Congress and P.L. 96-481 for the widely criticized fixed program participation term (FPPT) concept. None of us expected to stay in the 8(a) program indefinitely. We did expect the SBA to comply with P.L. 96-481 and determine program participation based on our individual competitiveness. We did not expect an arbitrary non-scientific 5-year FPPT to be adopted for all firms. Some of us felt, and still feel, that SBA's FPPT concept violates P.L. 96-481 rather than supports it. The FPPTs bear no relationship to competitive viability. If you buy the SBA statement, we negotiated a FPPT date. That's true on the face of it, but actually in my case, I negotiated a November 1983 FPPT, after SBA had told me to accept an earlier date or else. Or else, SBA would not process any contract documents beyond that time, even if our customers were requesting our services.

The SBA memorandum also interprets Congress' purpose in enacting P.L. 96-481 as follows: "Too many 8(a) firms had been in the program for too long, relying on federal work for continued existence and in so doing preventing other qualified minority-owned small firms from joining in the program." If you believe this, you believe that Congress intended the 8(a) program to be a "revolving door," with firms being forced out at some specific point in time to make room for others. You will also believe that Congress is interested in taking action against all firms, large and small, that rely heavily on federal contracting for their existence. I don't believe either is the case. SBA would like everyone to believe that the "revolving door" is a legitimate basis for forcing

FIRMS OUT AT THE END OF AN FPPT THAT WAS ARBITRARILY ESTABLISHED BASED ON THE SBA ADMINISTRATOR'S JUDGEMENT. THERE IS NOTHING THAT I KNOW OF THAT LIMITS THE NUMBER OF FIRMS IN THE PORTFOLIO, OTHER THAN SBA'S INABILITY TO DO ITS JOB.

AS FOR THE LATTER POINT ABOUT FEDERAL CONTRACTING, NOW THAT I AM OUT OF THE 8(A) PROGRAM, I DON'T EXPECT MY CLIENTELE TO CHANGE DRASTICALLY. I AM NOT SELLING A PRODUCT THAT YOU FIND ON EVERY STREET CORNER AND SHOPPING MALL. MY CUSTOMER IS PRIMARILY THE FEDERAL GOVERNMENT, AND MORE SPECIFICALLY THE DEPARTMENT OF DEFENSE. I BUILT MY STAFF ON THAT BASIS. I PLANNED MY GROWTH ON THAT BASIS. I DO NOT SEE ANYTHING WRONG IN THAT. THERE ARE PLENTY COMPANIES, THAT HAVE FOLLOWED THAT ROUTE. BDM, DYNALECTRON, PRC AND MANY OTHERS ARE IN THAT CATEGORY, AS WELL AS SOME OF THE FORTUNE 100 AND 500. I DO NOT HEAR THE CONGRESS OR ANY GOVERNMENT AGENCY TELLING THEM TO CHANGE THEIR MARKETPLACE

SBA SHOULD BE REQUIRED TO LOOK AT 8(A) COMPANIES ON AN INDIVIDUAL BASIS. IT SHOULD NOT BE PERMITTED TO LUMP ALL 8(A) FIRMS INTO ONE CATEGORY. WE ARE NOT ALL THE SAME, IN TERMS OF INDUSTRY, MARKETS, SPECIAL TALENTS, OR POTENTIAL. ALL 8(A) FIRMS DO NOT REQUIRE THE SAME RANGE OF SBA SERVICES. MOST IMPORTANTLY, EACH OF US FACE A DIFFERENT COMPETITIVE SITUATION. DID THE CONGRESS IN P.L. 95-507 AND 96-481 INTEND FOR SBA TO ASSIST US IN DEVELOPING INTO VIABLE FIRMS THAT COULD PARTICIPATE FREELY IN THE AMERICAN ECONOMY? OR, DID IT INTEND FOR SBA TO ADOPT A "SINK OR SWIM" MENTALITY JUST AS LONG AS IT KEPT FIRMS MOVING IN AND OUT OF THE PROGRAM? I BELIEVE SBA REQUIRES THE SPECIFIC DIRECTION THAT IS SPELLED OUT IN H.R. 863.

THE PROVISION IN H.R. 863 THAT SPECIFIES AND CLEARLY DEFINES THE THREE WAYS A FIRM MAY "EXIT" THE PROGRAM IS ALSO A VERY SIGNIFICANT DIRECTIVE FOR THE SBA. IT SHOULD PREVENT THE SBA FROM REMOVING FIRMS FROM THE PROGRAM, BECAUSE THE ADMINISTRATOR, IN HIS JUDGEMENT, THINKS THEY ARE TOO LARGE, TOO SUCCESSFUL, TOO HOPELESS, OR JUST HAVE BEEN IN THE 8(A) PROGRAM TOO LONG. AGAIN, I SPEAK FROM FIRSTHAND EXPERIENCE BECAUSE MY FIRM WAS ONE OF THOSE SINGLED OUT FOR REMOVAL FROM THE PROGRAM BECAUSE I WAS ONE OF THE "FAVORED FEW," TO USE A TERM USED FREQUENTLY BY THE SBA ADMINISTRATOR. I WAS TOO LARGE BECAUSE MY FIRM'S COMBINED ANNUAL SALES EXCEEDED THE SBA SIZE STANDARDS THAT SBA HAS BEEN TRYING TO REVISE FOR SEVERAL YEARS. I WAS TOO SUCCESSFUL BECAUSE MY GOVERNMENT CLIENTS WERE SATISFIED WITH MY WORK FROM BOTH A TECHNICAL AND COST STANDPOINT, AND CONTINUED TO NEGOTIATE CONTRACTS WITH ME.

I HAVE NO ARGUMENT WITH THE FACT THAT MY AVERAGE ANNUAL SALES EXCEEDED THE SBA OUTDATED SIZE STANDARDS. I DO FAULT THE SBA FOR USING THE COMPTROLLER GENERAL AND THE COURT'S DECISION AS A BASIS FOR REMOVING US FROM THE PROGRAM FOR BEING "OTHER THAN SMALL." THE COURT EVEN SAID THAT THE REMEDY WAS WITH CONGRESS AND THE SBA. THE COURT FELT THAT CONGRESS COULD HAVE LEGISLATED EXEMPTION TO THE SIZE STANDARDS FOR 8(A) FIRMS, AND QUOTE: "SBA COULD HAVE ADMINISTRATIVELY CREATED DIFFERENT SIZE STANDARDS FOR 8(A) FIRMS." IF SBA WOULD NOT HAVE BEEN INTENT IN GETTING US OUT OF THE PROGRAM ONE WAY OR ANOTHER, AS A MINIMUM IT COULD HAVE ADJUSTED THE STANDARDS FOR INFLATION. THE SIZE STANDARDS BASED ON AVERAGE SALES WERE LAST REVISED IN 1975. HAD THEY BEEN ADJUSTED FOR INFLATION UP TO NOW, THE $7.5 MILLION STANDARD WOULD HAVE ABOUT DOUBLED AND

BE CLOSE TO $15 MILLION.

I ALSO HAVE TO FAULT THE SBA'S "FAIRNESS DOCTRINE." IT CLAIMS IT ADMINISTERS THE 8(A) PROGRAM TO BE FAIR TO PARTICIPANTS, TO BE FAIR TO SMALL FIRMS ENTERING THE PROGRAM, AND TO BE FAIR TO THE NON-MINORITY SMALL BUSINESSES WHO ARE FORECLOSED FROM BIDDING ON THESE CONTRACTS, AND TO BE FAIR TO THE TAXPAYERS. I THINK THE SBA NEEDS A CIVICS LESSON. I AM FOR FAIRNESS TOO, BUT I ALSO WANT THE SBA TO COMPLY WITH THE LAW. I WANT THE SBA TO RECOGNIZE WHY IT WAS NECESSARY FOR THE NATION TO HAVE P.L. 95-507. I WANT THE SBA TO ACKNOWLEDGE THAT 8(A)-WORK IS DONE ON A NEGOTIATED BASIS TO MEET SPECIFIC NEEDS OF THE GOVERNMENT. I WANT SBA TO RECOGNIZE THAT THE 8(A) PROGRAM IS NOT A GOVERNMENT HANDOUT, BUT IS A LEGITIMATE ACTIVITY THAT IS A BARGAIN FOR THE U.S. TAXPAYER. TO PARAPHRASE, SBA HAS TO BE REMINDED THAT IT IS BETTER TO TEACH A MAN TO FISH, THAN IT IS TO PROVIDE HIM WITH A FISH OR TWO NOW AND THEN TO KEEP HIM FROM STARVING TO DEATH.

MR. SANDERS IN HIS MEMORANDUM ALSO MAKES SEVERAL OTHER INFERENCES ABOUT THE "FAVORED FEW." HE CITES A GAO REPORT THAT 31 PERCENT OF TOTAL 8(A) CONTRACT SUPPORT HAD GONE TO ONLY 50 COMPANIES. HE ALSO STATES THAT THE 21 FIRMS HAVE BEEN AWARDED COLLECTIVELY MORE THAN THREE QUARTERS OF A BILLION DOLLARS WORTH OF CONTRACTS. HE USED THAT INFORMATION AS MORE EVIDENCE OF THE "FAVORED FEW." CLARIFICATION IS AGAIN IN ORDER. CONTRACT SUPPORT IS NOT PROVIDED TO A FIRM ON SOME PREARRANGED BASIS. AS I HAVE SAID ELSEWHERE, THE "FAVORED FEW" HE CRITICIZES HAD THE INITIATIVE TO DO MARKETING, ANOTHER FUNCTION SBA FAILED TO PERFORM. THE CONTRACTS THAT ENSUED WERE NEGOTIATED TO FULFILL LEGITIMATE

GOVERNMENT NEEDS.

CONTRACT SUPPORT ALSO HAS TO BE DEFINED. THERE IS A BIG DIFFERENCE BETWEEN CONTRACT VALUE AND SALES. IN MY CASE 8(A) CONTRACT VALUE COULD BE AS HIGH AS $80 MILLION DURING MY TIME IN THE 8(A) PROGRAM. ALMOST ONE HALF OF THAT AMOUNT, HOWEVER, WAS FOR A 5-YEAR COMPETITIVE 8(A) CONTRACT ON THE ALASKA GAS PIPELINE. AS YOU MIGHT KNOW, THE ENTIRE PIPELINE PROJECT HAS BEEN PUT ON HOLD AND IT LOOKS LIKE ABOUT $30 MILLION OF THE $37 MILLION CONTRACT I HAD WON'T MATERIALIZE. SO, THAT ONE ACTION REDUCED MY TOTAL 8(A) CONTRACT VALUE BY ABOUT 40%. THAT FACT IS CONVENIENTLY IGNORED.

THE 8(A) PROGRAM IS NOT A LARGE ONE IN TERMS OF FEDERAL PROCUREMENT DOLLARS. ACCORDING TO MBDA DATA, TOTAL 8(A) PROCUREMENT DURING PERIOD FY 1981 WAS $7.38 BILLION. TO PUT IT IN PERSPECTIVE, THE DEPARTMENT OF DEFENSE AWARDS MORE THAN THAT TO 3 OR 4 FIRMS EACH YEAR. THE 8(A) PROGRAM HAS GROWN TO WHERE IT ACCOUNTS FOR A LITTLE OVER 3% OF TOTAL PROCUREMENT. THAT'S NOT A RECORD TO BE PROUD OF GIVEN THE PERCENTAGE OF MINORITIES IN THE POPULATION. THE 8(A) PROGRAM IS NOT A THREAT TO CORPORATE AMERICA. BUT, UNLESS SBA'S RECORD IMPROVES, IT WILL CONTINUE TO BE A THREAT TO MINORITY BUSINESS.

THE SBA'S CLAIM THAT THE SIX MONTH INTERIM SIZE STANDARD CHANGE WAS A HELP IN TRANSITION ALSO STRETCHES THE POINT. THE SIXTH MONTH REPRIEVE WAS AS MUCH TO THE GOVERNMENT'S ADVANTAGE AS IT WAS TO THE AFFECTED 8(A) FIRMS. IT WAS A STOPGAP MEASURE THAT GOT THE SBA SOME BREATHING SPACE. IT PROVIDED A LITTLE TIME FOR PROCESSING DOCUMENTS, BUT IT DID NOTHING TO ENCOURAGE PROCUREMENT

ACTIVITIES TO WORK WITH US. IT IGNORED THE INDIVIDUAL CHARACTERISTICS OF THE FIRMS. IT IGNORED THE ISSUE OF COMPETITIVENESS. IT IGNORED THE REQUIREMENT FOR SBA TO DEVELOP A TRANSITION PROGRAM FOR THE AFFECTED FIRMS. IT ALSO COVERED THE CONGRESSIONAL ELECTION PERIOD, AND MUTED A SIGNIFICANT PROTENTIAL AREA OF CRITICISM. AND, FROM THE GOVERNMENT'S STANDPOINT, IT ALSO RECOGNIZED THAT THE PROCUREMENT CYCLE WOULD BE ADVERSELY AFFECTED BECAUSE MOST PROCUREMENT DECISIONS FOR THE UPCOMING FISCAL YEAR AND THE METHOD OF PROCUREMENT HAD ALREADY BEEN MADE. IT IS TOO EARLY TO TELL AS TO WHAT THE REAL IMPACT WILL BE ON MY FIRM. THE SIX MONTH REPRIEVE PERMITTED SOME DOCUMENT PROCESSING, BUT MY ANALYSIS SHOWS THAT MY 8(A) SALES ARE GOING TO DECLINE ABOUT 65 - 70% BY THE END OF FY 84.

THE OTHER ASSISTANCE THAT THE SBA ADMINISTRATOR CLAIMS TO HAVE PROVIDED THE 21 FIRMS IS MORE STYLE THAN SUBSTANCE. ONE WAS THE FORMATION OF A SPECIAL TASK FORCE TO RECOMMEND STRENGTHENING THE SUBCONTRACTING PROVISIONS OF P.L. 95-507. THAT IS A SUBJECT THAT HAS BEEN BEATEN TO DEATH, WITH NO POSITIVE RESULTS. ANOTHER WAS TO CONDUCT SIZE REVIEWS ON AN EXPEDITED BASIS. BUT NOTHING WAS DONE TO MODIFY THE SIZE STANDARDS THAT SBA ITSELF ADMITS ARE A "MISH MASH." A THIRD WAS TO DELEGATE TO THE SBA REGIONS THE AUTHORITY TO APPROVE MODIFICATIONS AND OPTIONS TO EXISTING 8(A) CONTRACTS, A MINOR ADMINISTRATIVE ACTION THAT COULD HAVE BEEN IN PLACE ALL ALONG. A FOURTH WAS TO ALERT OTHER FEDERAL AGENCIES TO THE PLIGHT OF THE "NON-SMALL" 8(A) PARTICIPANTS, A FEEBLE GESTURE AT BEST.

THE MEMORANDUM DIDN'T DISCUSS THE SBA-MBDA INTERAGENCY

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OF RESPONSIBILITIES CONCERNING THE VARIOUS THINGS THAT MAY BE DONE TO ASSIST THE 21 FIRMS THAT WERE REMOVED FROM THE 8(A) PROGRAM, PROBABLY BECAUSE NOTHING DEFINITE HAS RESULTED. BUT, I AM ENCOURAGED BY THE STATEMENTS OF VICTOR RIVERA AND SECRETARY OF COMMERCE BALDRIGE. IF MR. RIVERA AND MR. BALDRIGE COME THROUGH ON THEIR COMMITMENTS, A HELPFUL PROGRAM MAY MATERIALIZE. IF THE MOMENTUM IS NOT MAINTAINED, ALL OF THE PROMISES WON'T BE WORTH THE PAPER THEY ARE PRINTED ON.

MR. SANDERS IN HIS FEBRUARY 9, 1983 STATEMENT SAID THAT SBA WAS GOING TO CONTINUE TO WORK WITH THE REMAINING 21 FIRMS AFTER FEBRUARY 14TH TO ASSIST IN THEIR CONTINUING SUCCESSFUL DEVELOPMENT. I THINK THAT WAS A RHETORICAL STATEMENT. I HAVE THE FEELING HE PREFERS TO WASH HIS HANDS OF US. WE ARE LOOKING TOWARD MR. RIVERA AND MR. BALDRIGE TO FORMULATE AND FOLLOW THROUGH ON SOME TYPE OF TRANSITION PROGRAM.

UNTIL THERE IS A CHANGE IN ATTITUDE AT THE TOP LEVEL OF THE SBA, AND UNTIL THIS CHANGE IN ATTITUDE PERMEATES THE ENTIRE ORGANIZATION, THE WISHES OF THE CONGRESS ARE BEING IGNORED, AND THE MINORITY BUSINESS COMMUNITY IS BEING RENDERED A DISSERVICE. IT SHOULD NOT BE NECESSARY FOR THE CONGRESS TO HAVE TO CONTINUE TO ENACT LEGISLATION TO GET THE SMALL BUSINESS ADMINISTRATION TO PERFORM ITS MINORITY BUSINESS DEVELOPMENT FUNCTION. IF THIS LEGISLATION SUCCEEDS IN GETTING THE SMALL BUSINESS ADMINISTRATION (SBA) BACK ON THE TRACK OF BETTER MANAGEMENT OF THE 8(A) PROGRAM, ALL CONCERNED WILL BE BETTER SERVED.

ONE DOESN'T HAVE TO BE A GRADUATE OF THE HARVARD BUSINESS SCHOOL TO KNOW THAT COMPETITION IS AN ESSENTIAL INGREDIENT OF

THE AMERICAN ECONOMY. IT SHOULD ALSO BE SELF-EVIDENT THAT THE ECONOMY IS MADE UP OF THOUSANDS AND THOUSANDS OF FIRMS THAT ARE IN A THOUSAND DIFFERENT LINES OF BUSINESS. UNFORTUNATELY, SBA SEEMS TO IGNORE THE REAL WORLD AND LOOKS AT THE 8(A) FIRMS AS IF THEY ARE ALL IN THE SAME BUSINESS, ALL HAVE THE SAME POTENTIAL, AND THE LARGER AMERICAN ECONOMY IS SUCH THAT THEY ALL WILL BE IN THE SAME COMPETITIVE ENVIRONMENT ONCE THEY LEAVE THE 8(A) PROGRAM.

A CASE IN POINT. I MOVED FROM BEING A SMALL MINORITY OWNED AND MANAGED COMPANY ELIGIBLE FOR SET ASIDE CONTRACTS, IF I WAS ABLE TO COMPETE TECHNICALLY AND THE NEGOTIATED PRICE WAS SATISFACTORY TO THE GOVERNMENT, TO BEING BIG BUSINESS WITH ONE STROKE OF THE PEN. SBA PAID NO ATTENTION TO MY ABILITY TO COMPETE. THERE WAS NO AGREED UPON TRANSITION PROGRAM WITH GOALS AND OBJECTIVES, EVEN THOUGH P.L. 95-507 IN 1978, ALMOST 5 YEARS AGO, CHARGED SBA WITH ASSISTING 8(A) PARTICIPANTS IN BECOMING COMPETITIVE. THIS IGNORES SEVERAL FACTS IN THE REAL WORLD. FIRST, MY COMPETITION IS NOW COMPANIES WITH SALES IN THE HUNDREDS OF MILLIONS. THEY HAVE THE MUSCLE AND CLOUT TO DENY MY SUCCESS, REGARDLESS OF MY CAPABILITY. SECOND, PRACTICALLY ALL GOVERNMENT PROCUREMENT IS NEGOTIATED PROCUREMENT, AND THAT MAKES IT NONCOMPETITIVE. IT ASSURES MY BIG COMPETITION ACCESS TO ITS GOVERNMENT MARKET SECTOR, AND DENIES ME THE OPPORTUNITY TO COMPETE. I HAVE TO NOT ONLY BE ABLE TO COMPETE, I HAVE TO BE A SUPERSTAR, BUT WHY DOES THAT HAVE TO CONTINUE TO BE THE CASE?

FOR BEING SUCCESSFUL I HAVE BEEN CRITICIZED FROM TWO DIRECTIONS. I HAVE BEEN CRITICIZED BECAUSE, UNDER THE GUIDANCE OF SBA, I

CONCENTRATED ON GOVERNMENT CONTRACTS AND I DEVELOPED A REPUTATION FOR GOOD WORK. I AM ALSO NOW CRITICIZED BY THE SBA FOR NOT DEVELOPING MORE NON-GOVERNMENT WORK. I HAVE NOT SEEN SIMILAR CRITICISM LEVELED AGAINST THE LARGE DEFENSE CONTRACTORS, WHO DO PRACTICALLY ALL OF THEIR WORK ON A NONCOMPETITIVE BASIS WITH THE FEDERAL GOVERNMENT, AND ONE OF THEIR CONTRACTS CAN EQUAL OR EXCEED THE CONTRACT VALUE OF THE ENTIRE 8(A) PROGRAM.

MY EXPERIENCE IS THAT I WILL BE ABLE TO COMPETE, IF I HAVE THE OPPORTUNITY TO PARTICIPATE IN THE GAME. REMOVING MY FIRM, AND OTHERS LIKE IT FROM THE 8(A) PROGRAM BASED ON SBA'S SPECIOUS REASONING THAT I MENTIONED EARLIER, DENIES ME THAT OPPORTUNITY. ON ONE DAY I WAS A MINORITY-OWNED SMALL BUSINESS, AND THE NEXT DAY, FEBRUARY 14, 1983, I WAS STILL MINORITY, AS YOU CAN SEE, BUT THAT WAS ABOUT ALL. MY FEDERAL CUSTOMERS WERE TOLD THEY COULD NO LONGER CONTRACT NEW WORK WITH US, EVEN THOUGH THEY MAY HAVE WANTED TO, AND BECAUSE THE SBA HAD DECREED THAT I WAS "OTHER THAN SMALL," MY COMPETITION NOW CHANGED DRASTICALLY. I AM A FIRM BELIEVER IN THE AMERICAN CAPITALISTIC SYSTEM, BUT I AM ALSO ASTUTE ENOUGH TO SEE WHEN THE CARDS ARE STACKED AGAINST ME. AND, WHETHER WE LIKE TO THINK ABOUT IT, OR NOT, RACISM IS STILL A SIGNIFICANT FACTOR IN TODAY'S WORLD. IF YOU DON'T THINK SO, LOOK AT THE RECENT MAYORAL CAMPAIGN IN CHICAGO.

IN SUMMARY, THIS LEGISLATION IS A VERY NECESSARY PIECE OF LEGISLATION GIVEN THE WAY THAT SBA HAS MANAGED OR I SHOULD SAY HAS MISMANAGED THE 8(A) PROGRAM OVER THE YEARS. H.R. 863 REALISTICALLY LOOKS AT THE SIZE STANDARD ISSUE, AND DOESN'T PENALIZE A FIRM FOR DOING GOVERNMENT WORK THAT IS NEEDED BY THE GOVERNMENT AND WHICH

IS CONTRACTED FOR USING GOVERNMENT PROCUREMENT REGULATIONS ON A NEGOTIATED BASIS. MORE IMPORTANTLY, IT EMPHASIZES COMPETITIVENESS IN LIEU OF THE FIXED PROGRAM PARTICIPATION TERMS (FPPT) CONCEPT THAT SBA IS USING TO IMPLEMENT ITS "REVOLVING DOOR" CONCEPT OF PROGRAM MANAGEMENT. JUST AS IMPORTANTLY, H.R. 863 REALISTICALLY LOOKS AT FIRMS AS INDIVIDUAL ENTITIES, AND DOESN'T LUMP THEM ALL IN ONE CATEGORY AS SBA DOES NOW BY ITS NON-SCIENTIFIC AND ARBITRARY FIXED NUMBER OF YEARS OF PARTICIPATION. MY ONLY REGRET IS THAT THIS LEGISLATION IS COMING ON THE SCENE TOO LATE TO HELP THE FIRST "21" FIRMS THAT WERE REMOVED FROM THE PROGRAM BASED ON SIZE, AND THE APPROXIMATELY 500 OTHER FIRMS THAT ARE BEING REMOVED FROM THE PROGRAM WITHIN THE NEXT 12 MONTHS BASED ON THE MISGUIDED FPPT CONCEPT. THE COMMITTEE IS TO BE COMMENDED FOR COMING UP WITH H.R. 863 AND FOR EMPHASIZING COMPETITIVENESS AS A KEY INGREDIENT FOR MINORITY BUSINESS DEVELOPMENT. IT IS ALSO TO BE COMMENDED FOR ITS TENACIOUSNESS AND DETERMINATION IN ATTEMPTING TO GET REASONABLE AND EQUITABLE TREATMENT FOR THE MINORITY BUSINESS COMMUNITY.

THANK YOU, I WILL TAKE YOUR QUESTIONS NOW, UNLESS YOU PREFER TO WAIT AND MAKE THEM PART OF THE PANEL DISCUSSION.

Mr. ADAMS. In fact, based on the testimony of the last panel, I felt that it was more important that I talk to the other side of the aisle, my being a black Republican.

Mr. MITCHELL. We remain a bipartisan committee, and any sins that you might have committed in the past are forgiven. [Laughter.]

Mr. ADAMS. I really don't know where to proceed.

However, I think it is important to point out, Mr. Chairman, that there are those of us in the Republican Party that are quite embarrassed by what is going on here today.

And, by that, I use as a reference Guy Vander Jagt, Dick Lugar, Paul Trible, John Warner, two Senators from my State; my Congressman Stan Parris, Mac Baldrige, the Secretary of Commerce, and Ambassador Mittendorf, all of whom I am sure Congressman Boehlert is familiar with, because this whole thing started back in the Eisenhower administration when he, in helping to create the Small Business Administration, saw the necessity of the small companies—in those days the small white companies—receiving a fair and equitable share of Government business, because the big businesses were just gobbling it up.

Essentially, it hasn't changed insofar as we are concerned; but insofar as the small business community is concerned, it has changed.

Along came President Nixon, and, of course, my entrance on the scene, because I returned from Vietnam in 1968 and retired in 1969 to get involved in helping to solve the so-called black problem.

The interesting thing then was black capitalism, which I thought was very important, and I thought it would be a tool in helping us solve the problem that existed in the United States today, insofar as racism was concerned.

Under Mr. Nixon, we had Tom Kleppe, who was the Administrator, and through much discussion and much argument, we finally came up with rules, regulations, administrative procedures, and then Public Law 95-507, and after Public Law 95-507, we had the White House Conference, which was attended by literally thousands of small businessmen from all over the country, who affirmed President Eisenhower's guidance that something special must be done to insure that small and minority businesses receive a fair and equitable share of Government business.

Most of the attendees at that conference were of our party—Republican. I am happy to say that most of them supported President Reagan for his drive for the Presidency.

However, since this administration has taken office, and I am going to absolve the President because he has gone on record announcing his feeling about minority businesses; we have allowed—I say we, meaning Congressman Boehlert and myself—a minority to infiltrate not only the Small Business Administration, but other agencies of the Federal Government with their own very selfish agenda, which proved very, very dangerous to the system, as it now stands.

This is borne out by the fact that in the last 2 years, with regard to the regulations of fixed term participation and others involving graduation, that the Small Business Administration held hearings, where over 200 businessmen testified as they are doing here today,

and of those 200, only 1—and I repeat only 1—agreed with the SBA's position to proceed with the regulations that they saw fit to implement.

This sent a shock wave through my system and a fear that I had only experienced in Vietnam. This experience was when I was missing in action for 3 days and my friend Jerry worried about it.

I could only equate that feeling with a combat situation, because it told me that without the presence of this body in our society, that the same thing could happen to the minorities in this country that happened to the Jews in Germany. The same thing could also happen to our Government that happened to the German Government, and the German people—our small minority could vent their anger and their selfish interests on a minority in spite of the overall feeling of the population.

The question that I ask is not whether minorities are receiving a fair share, but is 98 percent of the market enough? And that is what is going to our majority brothers—98 percent.

The support for this legislation is here—here on the Republican side as well as the Democratic side, because it is fair and just.

I should not have to apologize for my own party, but I am going to, because I feel that it is necessary. But I also feel that those who sit to your left, Mr. Chairman, after examining what you are proposing to do, will not only approve this legislation but go into the Small Business Administration, and ask Mr. Sanders and his deputies to account for the games that they are playing on the American people.

I also caution you, that there are elements out there in our society, that are opposed to minorities receiving any further share in Government business, or any business, for that matter.

I have heard you ask questions about the majority companies subcontracting to minority firms.

Mr. Chairman, when we testified back in 1965, Mr. Addabbo asked a question: "What must be done, or what should we do that would help major companies subcontract to minority companies?"

That question was answered: "That if we give them a dollar incentive, the 8(a) program would go away, because we perceive that if they were paid for any inconvenience that might be served for subcontracting to minority firms, that incentive would be enough for them to comply with the intent of fairness and justice."

The regulations were enacted saying that they could receive up to 10 percent, I believe, additional profit, if they had a fair and equitable subcontracting program.

That has not happened. There is not a single contractor that has banged on my door—and we are a very successful company—to subcontract anything with me; and when I have gone and approached these contractors to have them subcontract, they have found many, many reasons why they feel that we are simply not qualified.

Consequently, we have had to take them on head on, which we will do now, and we will continue to do.

Unified Industries is not a part of the 8(a) program, as such, anymore. Also, have been asked to compete with the Dows, Rockwells, the Boeings, and what-have-you of the world, because we are classified as big business under many aspects.

Because the size standards themselves haven't been changed, SBA itself has admitted that the size standards are a mish-mash.

I contend, gentlemen, that we must act—and I pray that nothing ever happens to this body, because if it does this country will end up in chaos. You are the only balancing ingredient in the American system that keeps us on an even keel.

Now, without saying, I support your legislation; I commend the Chairman, and I ask that Mr. Boehlert talk to Mr. Daub, and Mr. Daub to Mr. Molinari, and I will speak with Mr. Vander Jagt, and ask them to attend tomorrow's hearing, and the rest of this hearing because I feel that this will probably be some of the most significant legislation that we will talk about in this session of Congress.

I thank you, Mr. Chairman.

Mr. MITCHELL. All right. We will hear from all of the witnesses, but I am constrained to comment, Mr. Adams, that that was especially moving testimony for me. I think it goes without saying—and I think all of the members of the committee would agree—that I have striven mightily to run this committee on a bipartisan basis. I really have. I think the future of small business, the future of minority business, should not depend upon any partisan positions.

But you did an analytical presentation that was very, very moving, a socioanalytical/socioeconomic analytical presentation, and I want to thank you.

Mr. Davis.

TESTIMONY OF JERRY DAVIS, JR., PRESIDENT, UNIFIED SERVICES, INC.

Mr. DAVIS. Mr. Chairman. I am certainly delighted to be here to express my support for H.R. 863.

First of all, I would like to do something unusual; I would like to say a couple of good things about the 8(a) program. One I would like to say that I certainly would not be in business if it had not been for the 8(a) program.

And since being in the 8(a) program, we have established a good banking relationship. We have established a track record. I have a reasonably competent staff with about 1,000 workers.

We are very pleased with that. We are not in the 8(a) program anymore, and we are certainly sorry about that.

The problem, I think—by the way, before I go any further, I would like to say that I have provided copies of my testimony to the committee, and would like to have the full testimony entered into the record.

Mr. MITCHELL. Without objection, it will be so entered into the record.

[Mr. Davis' prepared statement follows:]

Prepared Statement of Jerry Davis, Jr., President, Unified Services, Inc.

MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THE HOUSE OF REPRESENTATIVES AND OF THIS SELECT SUBCOMMITTEE, I AM PLEASED TO MAKE THIS APPEARANCE; AND TO TELL YOU OF MY CONTINUED INTEREST IN AND COMMITMENT TO MINORITY BUSINESS DEVELOPMENT. I THANK YOU MOST CORDIALLY FOR THIS OPPORTUNITY.

AS YOU KNOW, MY COMPANY WAS ONE OF THOSE RECENTLY GRADUATED FROM THE 8(A) PROGRAM. UNIFIED SERVICES, INC. WAS INDEED AN OUTGROWTH OF 8(A). MY BUSINESS WAS IN FACT LAUNCHED BY THE ESTABLISHMENT OF THE 8(A) PROGRAM, AND IS NOW ON A SOUND RELATIONSHIP WITH A MAJOR BANK. WE HAVE A STAFF OF EXPERIENCED EXECUTIVES, SUPERVISORS, "LEAD" PERSONNEL/CREW CHIEFS, LABORERS AND AN INVENTORY OF EQUIPMENT. IT ALSO HAS A TRACK RECORD AS A SOLID CUSTODIAL SERVICES COMPANY. ALL OF THE ABOVE IS AN ESSENTIAL CORE TO BEING COMPETITIVE. USI DOES INDEED HAVE MANY OF THE ATTRIBUTES NEEDED FOR FUTURE SUCCESS. WE HAVE THE 8(A) PROGRAM TO THANK FOR OUR CURRENT POSITION.

TO DATE, THE SBA'S 8(A) PROGRAM HAS AWARDED $9 BILLION WORTH OF FEDERAL PROCUREMENT CONTRACTS TO 8(A)'S 4,568 PARTICIPANTS. I KNOW THAT SOME MIGHT PERSONALLY SCOFF AT THE FIGURE "$9 BILLION" WHEN FEDERAL PROCUREMENT AWARDS FOR THE SAME PERIOD SINCE 1968 HAVE TOTALLED, NOT IN HUNDREDS OF BILLIONS, BUT IN TRILLIONS OF DOLLARS. NONETHELESS, THE AWARD PROGRAM DID ENABLE ME TO GO INTO BUSINESS WHERE I MIGHT NOT OTHERWISE HAVE DONE SO. HAD THE 8(A) PROGRAM FUNNELED MORE THAN $9 BILLION FROM 1968 TO PRESENT, IT IS POSSIBLE THAT (1) MORE MINORITY

BUSINESS STARTUPS MIGHT HAVE OCCURRED; OR (2) THOSE LIKE USI THAT WERE PERMITTED TO PARTICIPATE HAVE EXPANDED MORE RAPIDLY. AT THIS POINT, SUCH IS MERE SPECULATION, OR IN THE CATEGORY OF "MONDAY MORNING QUARTERBACKING." IMPORTANTLY, USI IS TODAY A VIABLE BUSINESS.

THE FORMATION OF UNIFIED SERVICES, INCORPORATED OCCURRED FOLLOWING MY TWENTY-SIX YEARS WITH THE U. S. ARMY. I RETIRED FROM SERVICE WHILE AT THE PENTAGON AS A LIEUTENANT COLONEL; AND HAD PREVIOUSLY COMMANDED A BATTALION IN VIET NAM. MY FORMAL POST-SECONDARY EDUCATION WAS OBTAINED WHILE ON ACTIVE DUTY, WITH THE EXCEPTION OF MY TIME AT THE HARVARD GRADUATE BUSINESS SCHOOL IN THEIR SMALL BUSINESS PROGRAM SINCE I'VE BEEN IN BUSINESS.

MINORITY BUSINESS ENTERPRISE HAS ITS MOST WIDESPREAD EXISTENCE DUE TO THE 8(A) PROGRAM. "TAKE-OFF" IN TERMS OF THE NUMBERS OF MINORITY-OWNED FIRMS HAS OCCURRED SINCE 1968. WITH THE RIGHT SUPPORT, MINORITY BUSINESS ENTERPRISE COULD BE AN IMPORTANT GROWTH SUB-SECTOR WITHIN OUR ECONOMY. UNFORTUNATELY, PRIOR TO FEDERAL SUPPORT, THERE WAS LITTLE INCENTIVE FOR A BLACK MAN TO GO INTO BUSINESS. MY FATHER DID NOT SIT AROUND THE DINNER TABLE WHEN I WAS YOUNG IMPARTING BUSINESS KNOWLEDGE TO ME. THUS, I -- LIKE MOST BLACK AMERICANS -- CERTAINLY HAD NO GREAT LEGACY BEHIND ME.

LIKE SMALL BUSINESS IN GENERAL, THERE APPEARS TO BE A CONTINUING STIGMA. THOSE IN THE U.S. WHO CONTROL COMMERCIAL MARKETS SEEM CONSTANTLY BOTHERED BY WHETHER A SMALL BUSINESS ATTEMPTING TO CAPTURE WORK WILL SURVIVE; IF A MINORITY BUSINESSMAN SHOWS UP, THEN THE WORRY DEEPENS -- CONSIDERABLY. MOST AGAIN FOCUS ON THE NEGATIVE: THE RATE OF FAILURES. TOO FEW BEAR IN MIND THAT SMALL BUSINESSES HAVE MADE THE GREATEST CONTRIBUTIONS TO JOBS EXPANSION SINCE 1970.

BEFORE COMMENTING IN DETAIL ON THE PROPOSED NEW LEGISLATION SENT ME SEVERAL WEEKS AGO, ALLOW ME NEXT TO EXPRESS MY PERSONAL VIEWS REGARDING THE IMPORTANCE OF LEGISLATION. THE ENTIRE AMERICAN SYSTEM OF JUSTICE DEPENDS UPON CITIZENS DEMANDING JUSTICE FROM THEIR GOVERNMENT, NOT EXPECTING THAT SOMEONE ELSE WILL PLACE THEIR DEMANDS PROPERLY BEFORE THE GOVERNMENT. THE DISTRICT COURT THAT MR. SANDERS STATES RULED IN SBA'S FAVOR LAST YEAR REGARDING PROGRAM GRADUATES' CONCERNS RESTED WITH NEW LEGISLATION, NOT WITH THE COURTS. HENCE, THE REAL RULING WAS IN FAVOR OF OUR ONCE AGAIN DEALING WITH YOU AND YOUR COLLEAGUES AS LAWMAKERS.

WHEN PRESIDENT REAGAN ISSUED HIS OFFICIAL STATEMENT LAST DECEMBER IN FAVOR OF MINORITY BUSINESS DEVELOPMENT, HE SET FORTH AS ONE OF ITS "BASIC PRINCIPLES" THE "GOVERNMENT HAS AN OBLIGATION TO ENSURE FAIRNESS AND EQUAL OPPORTUNITY FOR ALL ITS CITIZENS." IN AN EARLIER ADMINISTRATION, FORMER PRESIDENT NIXON TOOK TO HEART THE RECOMMENDATIONS OF THE KERNER COMMISSION REPORT OF THE LATE 60'S WHEN IT SPOKE TO THE CONCEPT OF "OWNERSHIP." THE KERNER REPORT ARGUED THAT "IN SPITE OF DEVELOPMENT OF JOB OPPORTUNITY, CREATION OF IMMENSE SOCIAL WELFARE PROGRAMS, LEGISLATIVE REAFFIRMATION OF CONSTITUTIONAL RIGHTS, AND MORE, THE MINORITIES' PURSUIT OF OWNERSHIP WAS AS INTRINSIC TO THE PHILOSOPHY OF MINORITIES AS IT WAS FOR THEIR MAJORITY COUNTERPARTS. THIS ARGUMENT WAS ACCEPTED BY THE NIXON ADMINISTRATION IN INITIATING THE 8(A) PROGRAM ON BEHALF OF MINORITY BUSINESS ENTERPRISE. THUS, THE NEED FOR FEDERAL INTERVENTION ON BEHALF OF MINORITIES BY SEVERAL ADMINISTRATIONS HAVE BEEN WELL DOCUMENTED.

ANOTHER IMPORTANT PIECE OF LEGISLATION -- PROBABLY THE MOST IMPORTANT FOR MINORITY BUSINESS ENTERPRISE -- WAS P.L. 95-507. MINORITY BUSINESS DEVELOPMENT HAS NOW GONE THROUGH TWO IMPORTANT PHASES: PHASE I MAY BE CALLED "PRE-P.L. 95-507;" "PHASE II, IS THE "POST-P.L. 95-507" PHASE. PHASE I, FROM 1969 TO 1978 WAS A

"STARTUP" PHASE. THIS PHASE, WHILE IT PRODUCED THE VAST MAJORITY OF 8(A) FIRMS, WAS FRAUGHT WITH CONSIDERABLE PROBLEMS RELATED TO PURPOSE, GOALS, AND POLICIES.

A MOST ANTI-BUSINESS DEVELOPMENT CONCEPT ALSO EMERGED DURING THIS PHASE I PERIOD: NAMELY, THE NOTION THAT PROCUREMENT ASSISTANCE AND FINANCIAL AND TECHNICAL ASSISTANCE OVER A 3-5 YEAR PERIOD WAS A REASONABLE OPPORTUNITY FOR A COMPANY, INCLUDING NEW STARTS, TO BECOME "COMPETITIVE" AND/OR "VIABLE" EMERGED. THIS WAS THE MOST ANTI-BUSINESS CONCEPT AMONG MANY CONTENDERS BECAUSE, FIRST, IT MADE "TIME" THE PRIMARY CRITERIA FOR EVALUATION, AND IT INTRODUCED TIME DEMANDS TOTALLY UN-RELATED TO REAL-WORLD BUSINESS DEVELOPMENT. SECOND, IT IGNORED ALL OF THE EXISTING EMPIRICAL DATA ON BUSINESS DEVELOPMENT.

P.L. 95-507, AND LATER P.L. 96-481, ADDRESSED MANY OF THE EARLIER SHORTCOMINGS. I MAKE MENTION OF THE IMPORTANCE OF LEGISLATION AND OF OUR BEING HERE TODAY, BECAUSE BEFORE THE AFORE-REFERENCED PUBLIC LAWS WERE PUT IN PLACE SBA DID NOT PROVIDE A BUSINESS DEVELOPMENT ASSISTANCE THRUST. WITHOUT YOUR GUIDANCE, SBA POLICY HAS IN THE PAST BEEN INEFFECTIVE. I REPEAT MY EARLIER SENTIMENT: THE ENTIRE AMERICAN SYSTEM OF JUSTICE DEPENDS UPON CITIZENS TAPPING INTO THE LEGISLATIVE PROCESS.

I AM THEREFORE PLEASED TO SPEAK BEFORE YOU TODAY REGARDING POSSIBLE NEW LEGISLATION -- H.R. 863 -- AS THIS PROPOSED BILL WILL ASSIST OTHER 8(A) CERTIFIED FIRMS REGARDING THEIR FUTURE GRADUATION. IMPORTANTLY, H.R. 863 PROPOSES TO DO PRECISELY WHAT THE DISTRICT COURT SUGGESTED LAST SUMMER. I AM CERTAIN THE JUDGE HIMSELF COULD NOT HAVE ASKED FOR BETTER FOLLOWUP! BY SETTING FORTH WHAT AN 8(A) BUSINESS PLAN MUST CONTAIN, FOR EXAMPLE, SBA IS GIVEN SIGNIFICANTLY IMPROVED GUIDANCE AND CRITERIA - BEYOND JUST A TIME LIMIT ALONE - FOR ESTABLISHING A PARTICIPATING BUSINESS' "COMPETITIVE VIABILITY."

HAD THIS LEGISLATION BEEN IN PLACE LAST YEAR, THE FOLLOWING AGONIES MIGHT HAVE BEEN AVOIDED:

(A) THE RULING OF THE GAO, AND THE ENSUING LAW SUIT MIGHT NOT HAVE BEEN NECESSARY - BECAUSE AS THE COURT RULED, OUR NEED WAS LEGISLATION, NOT LEGAL RULING.

(B) THE ARBITRARY ASSIGNMENT OF FIXED PROGRAM PARTICIPATION TERMS BY SBA WOULD NOT HAVE OCCURRED. THESE WERE NOT NEGOTIATED, BUT RATHER FORCED UPON EACH 8(A) PARTICIPANT, IN AN "OR ELSE" POSITION. THAT IS, IF FIRMS DID NOT AGREE TO SBA'S DESIGNATED FPPT, THEY WERE TOLD THEIR ONLY ALTERNATIVE WAS TO LEAVE THE 8(A) PROGRAM IMMEDIATELY. I'M SURE YOU MEMBERS DID NOT INTEND THIS AS A PROCEDURE WHEN ENACTING P.L. 96-481.

(C) THE GRADUATION OF A NUMBER OF THOSE PUSHED OUT AS OF FEBRUARY 14, 1983, SIMPLY BECAUSE THEIR "COMPETITIVE VIABILITY" WAS NOT UP TO THE STANDARDS NOW CALLED FOR BY H.R. 863 MIGHT NOT HAVE OCCURRED.

(D) YET OTHERS ALSO PUSHED OUT MIGHT HAVE BEEN ALLOWED TO STAY ON, BASED ON MORE REALISTIC SIZE STANDARDS. THE LATTER HAVE NOT BEEN UPDATED SINCE 1975, AND HENCE, DON'T REFLECT HIGHER INFLATION OR U.S. BUSINESS GROWTH OVER THE PAST EIGHT YEARS. I MIGHT ADD THAT SBA IN NOT REVISING THESE STANDARDS IS IN VIOLATION OF DIRECTIVES IT HAS RECEIVED FROM THE CONGRESS AS WELL AS GAO.

(E) THOSE LEGITIMATELY GRADUATED MIGHT HAVE BEEN ALLOWED TO KEEP THEIR SMALL BUSINESS STATUS. PLEASE BEAR IN MIND, WE WHO GRADUATED SUFFERED "DOUBLE JEOPARDY": I.E., WE LOST BOTH OUR 8(A) AND OUR SMALL BUSINESS STATUS. AS A RESULT, MY COMPANY NOW STANDS TO LOSE OUR ABILITY TO EVEN BID COMPETITIVELY ON CONTRACTS PREVIOUS CONSTITUTING A (LIMITED) MARKET IN WHICH WE'VE SHARED.

CONGRESSMAN MITCHELL AND OTHER DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE, MY GREATEST CONCERN IS THAT SBA HAS TURNED THE 8(A) PROGRAM INTO A "REVOLVING DOOR." WE WHO RECENTLY GRADUATED WERE TOLD WE HAD TO LEAVE TO MAKE ROOM FOR OTHERS. SBA HAS NOW ESTABLISHED FPPT DATES FOR THOSE STILL IN THE PROGRAM TO

PUSH OUT 400 FIRMS A YEAR SO THAT 400 MORE MIGHT BE ABLE TO ENTER. THUS, THE OPERATING GROUND RULES, PENDING THE ENACTMENT OF H.R. 863, ARE TO GET FIRMS THROUGH AS FAST AS POSSIBLE RATHER THAN ASSIST THE DEVELOPMENT OF COMPETITIVE VIABILITY. WON'T THIS ENCOURAGE OTHER MINORITY ENTREPRENEURS TO GO INTO BUSINESS WITHOUT MUCH CHANCE FOR SUCCESS, SIMPLY BECAUSE THERE WON'T BE A REASONABLE TERM FOR FEDERAL ASSISTANCE? I WONDER IF THIS WON'T JUST RESULT IN A FLAGRANT WASTE OF FEDERAL FUNDS.

SECONDLY, I WORRY ABOUT THOSE FIRMS STILL IN THE PROGRAM THAT HAVE BEEN FORCED INTO A FPPT DATE THAT THIS PENDING LEGISLATION WON'T BE ABLE TO HELP. IN SHORT, I WOULD ASK THE SUBCOMMITTEE TO SERIOUSLY CONSIDER MAKING THIS LEGISLATION RETROACTIVE TO AT LEAST ASSIST THOSE STILL IN THE PROGRAM, BUT DUE TO BE GRADUATED IN THE NEXT 12 MONTHS.

THIRDLY, THE SUBJECT OF SIZE STANDARDS, AND THE NEED TO REVISE THEM CANNOT BE OVERLOOKED. AS A RESULT OF BEING RECLASSIFIED "OTHER THAN SMALL," MY COMPANY LOST THE OPTIONS FOR FOLLOW-ON WORK, WHILE I STILL HAD 8(A) STATUS. MOREOVER, MY INABILITY TO COMPETITIVELY BID ON A CONTRACT WE HELD FOR SEVERAL YEARS -- THE LARGEST CONTRACT, I MIGHT ADD -- WILL MEAN LITTLE HOPE FOR MY BEING ABLE TO RETAIN THOSE BENEFITS WE GAINED FROM 8(A) PARTICIPATION. SENIOR MANAGEMENT COULD BE LET GO; PREVIOUSLY PURCHASED CAPITAL EQUIPMENT MAY EITHER BE LEFT IDLE OR SOLD AT A LOSS. AND MORE. A CHANGE IN SIZE STANDARDS THAT AT LEAST CONSIDERS THE EFFECTS OF INFLATION COULD MAKE ALL THE DIFFERENCE IN THE WORLD TO ME RIGHT NOW IN TERMS OF WHETHER I"LL BE ALLOWED TO BE COMPETITIVE -- OR SIMPLY START OVER.

MR. CHAIRMAN, OTHER DISTINGUISHED MEMBERS, THANK YOU KINDLY FOR YOUR ALLOWING ME TO SPEAK ON BEHALF OF H.R. 863, AND FOR THOSE WHO WILL HOPEFULLY BENEFIT FROM THIS INTENDED PURPOSE. LEGISLATION IS A WAY OF LIFE IN THESE UNITED STATES. WITH IT, AND WITH THE EXPERIENCES OF THOSE HAVING PREVIOUSLY PARTICIPATED IN THE SBA-ADMINISTERED 8(A) PROGRAM, A BETTER BUSINESS DEVELOPMENT CONCEPT CAN BE SHAPED FOR THE FUTURE.

Mr. DAVIS. I think that one of the big problems in our country is that it has only been about 12 or 15 years that especially black business has been something that has been moving, and people are kind of getting used to it.

When I was growing up, back in Oak Grove, La., as a sharecropper, my father did not sit around the dinner table and talk about business, because when I grew up we just thought it was unheard of that black people be in business, that that was totally a white domain, and I suspect that probably the first viable black business person that I met that was black, was probably Ted Adams, after I got out of the Army.

I spent 26 years in the U.S. Army. I went in as a private off this farm down in Oak Grove, La., went up through the ranks and became a lieutenant colonel, commanded a battalion in Vietnam, and then came back from Vietnam and was stationed over at the Pentagon.

And Ted Adams came down and told me that I had better get out of the Army because I wasn't going to make general, that the war was winding down, and that I had better get out and try to do something else to make some money because we hadn't made any money in the Army. [Laughter.]

And so, I got out of the Army, because Ted told me that this new 8(a) program that they were pushing, was the best thing since sliced bread, and that I ought to get out of the Army and get into it.

So, I got out, and we, in fact, were in business together at that time, and the 8(a) program was, in fact, in being, but nobody knew anything about it.

Ted Adams got on an airplane, and went all over the country explaining it to procurement officers, showing them where to find it, and it finally caught on where they started recognizing, and then they started setting aside contracts for minority business.

I finally got into the 8(a) program, not in any high technology, or manufacturing because frankly I was apprehensive; I really didn't think white folks was going to let black folks manufacture nothing. [Laughter.]

Or do much engineering. I didn't think that. So, I thought I would get into a fairly simple industry, from their point of view, that we could do; and I formed a janitorial firm.

OK, so we did pretty well with that, when I was trying to sell engineering services for Ted, I talked to the procurement officers, and I told them what I was trying to do, and they would look at me rather funny, and I could just see them thinking that: "Who does he think he is? He thinks he is an engineer."

So, I didn't get much business trying to sell engineering. However, when I started my janitorial firm, and I would go back and tell them I just wanted to clean their building, at least they were a little more receptive; and we did get some contracts.

Well, black business people—and the reason I keep saying, black as opposed to minorities, I have never been an Asian American—I can only speak from my own experience. I certainly support them, because I know they have the same kind of problem that we have, but from a black perspective, it is difficult enough for a small busi-

ness in our system to make it; but it is doubly hard when you are trying to compete if you are black.

They know that we have a number of small business failures, be they black or white, but, boy, when you go in trying to penetrate the commercial market, and you are black, you can almost forget it.

I don't know whether this is conscious, and I am always reluctant to accuse anybody of racism—maybe it is unconscious racism—maybe they have something in the back of their mind that says, "He simply won't make it." So, therein, lies our problem. Now, I suspect that for the rest of my lifetime that our American society will not be to the point where black business people, as a whole, can totally ignore Government procurement or Government help, because I just don't think our society would have progressed to the point that we would be treated equally; we would be judged on the capability of our company. I just don't think that is going to happen in the foreseeable future. I think that is why it is so essential that this particular legislation be passed so that it at least gives some kind of a reasonable criteria for people to be graduated out of the 8(a) program.

Right now, the emphasis is on time—3 to 5 years, 5 to 6 years, evaluating the funds, individually—without evaluating a particular market that they have to operate in. None of that. The prime criteria is time, and what they have actually done is to turn this 8(a) program into a kind of revolving door, where so much importance is put on numbers and time as opposed to competitive viability.

Just for a moment, the size standards, and a lot has been said about them. But in my particular industry, we are supposed to be at about $4.5 million a year before we become a large business; and there is no bridge between the $4.5 million to having to go out and compete with firms that are doing $150 million, like Allied, and TEMCO, and Prudential, those are the kinds of companies that I have to compete with, and there is no way that I can do it, because if they keep me in this small category, you don't have time to train the type management you need to get out there and really compete with the big guys.

So, I think it is critical that something be done about the size standards. And as a little footnote, I would like to add that I am a black Republican too, and I am certainly a little bit disappointed. We have had the worst time in minority business under this administration than any other administration that I know about. And that is a real shame, because we always thought, or I always thought that the Republicans were for business, and I am certainly for business, because I think therein lies the hope of black people, where they acquire some ownership, and that we can present the proper role models for young blacks coming along behind us, where they can consider businesses being a viable alternative. And, I tell you, I am really disappointed over what has happened to minority business in this administration.

One other thing, in closing, Mr. Chairman, I would certainly like to express my deep appreciation to you and this committee for being the leaders in this minority business enterprise.

As a matter of fact, I have been so concerned about you, Mr. Chairman, that I have been tempted to take out insurance on you,

because we feel that if something happened to you, all is lost; and I thank you very much.

Mr. MITCHELL. Don't take it out yet, please. [Laughter.]

Mr. Mott.

TESTIMONY OF RAY A. MOTT, PRESIDENT, RAVEN SYSTEMS & RESEARCH, INC.

Mr. MOTT. Mr. Chairman, and members of this committee, appreciate the opportunity to be here today, and give my views in reference to this important and most needed legislation as presented under H.R. 863.

H.R. 863, when adopted, will repeal Public Law 96-481, more specifically the fixed program participation term.

H.R. 863 will permit 8(a) participants a more realistic criteria for completing their program tenure, namely competitive viability, instead of a fixed time period.

Clearly, this was the intent of Public Law 95-507, an intent that Public Law 96-481 did not capture. The purpose of the 8(a) program as established by Public Law 95-507 is to foster business ownership by individuals who are both socially and economically disadvantaged, promote the competitive viability of such firms by providing available contracts, financial, technical, and management assistance, as may be necessary; to clarify and expand the program for procurement by the U.S. Government of articles, equipment, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

It was not the intent of Public Law 95-507 to push firms through the 8(a) program in 3 to 5 years regardless of viability. Obviously Public Law 96-481 was never properly bridged with Public Law 95-507.

Over the years, SBA has been provided with a number of studies containing statistical data on how long it takes for a firm to become viable. SBA's own library and data bank shows that the development of a business from start-up to maturity, or competitive viability, can take from 9 to 20 years.

It is important to note that the information used to derive this data in SBA's report is from successful companies which had not suffered the effects of discriminatory practices.

It is essential that these SBA studies and reports be used in conjunction with H.R. 863 to fulfill the true intent of the law as stipulated under Public Law 95-507.

The 8(a) program has, and can, work to achieve its purpose when it is applied as intended, using sound business practices and policies.

I applaud SBA for the criteria that was utilized in establishing the 6-month interim rule, namely, net worth and income.

For the first time, SBA used a sound business principle in determining program participation.

Mr. Chairman, I also fully support the provision of H.R. 863, which provides that no portion of the gross receipts or employment of a business concern attributable to the performance of 8(a) contracts, shall be taken into account when computing the size of the

concern. The use of 8(a) sales to calculate size provides an artificial presentation of that company's size. When terminated from the 8(a) program, the 8(a) dollars and employees on contract fall out. The company is once again small and disadvantaged. With the implementation of H.R. 863, this situation will be remedied.

Mr. Chairman, there are not many firms I know of that want to or expect to stay on the 8(a) program forever. With the right program tools put in place, as is being stipulated by H.R. 863, companies will have a much better chance of coming out of the program with a bachelor's degree instead of coming out with the equivalent of a junior high school education, and trying to compete in a world of business that has developed a business acumen equivalent to that of several doctorate degrees.

Over the past several months, Raven and many of the other proposed graduated 8(a) companies, have marketed agencies, and have been determined to be technically and financially capable of performing agency requirements.

Negotiations are stopped because we have been identified as other than small, and no longer eligible for 8(a) or small business set-aside procurements.

As one agency recently put it, in terms of receiving their procurements, 2 days ago:

> We are too large for the small business set-asides, and too small to compete with the major corporations that receive their business. Being identified as other than small is like being in purgatory awaiting dispatchment to heaven or hell.

The 8(a) program has provided myself and other socially and economically disadvantaged people the opportunity to develop to a certain level. It is incumbent on all those concerns, that the opportunity for further development and education be continued; to stop this process before its completion robs this economy of a valuable resource, a financially viable minority business enterprise.

I would like to say that as far as about 50 to 100 firms in the 8(a) program, we actually suffered a de facto termination back in 1981 when Mr. Cardenas decided that he was going to remove some of the firms from the program. That impacted upon the dollars that we had all spent in marketing over the year before as well as the 2 years since that time.

I have a question: "Why did SBA not utilize the larger 8(a) firms to help develop the firms coming into the program?"

In other words: Why throw out the baby with the bath?

It has been stated that SBA does not have the resources necessary to manage but so many firms within the program. Well, firms such as Raven, Unified Industries, Unified Services, Sterling Systems, IBS, any number that I can name that have certain capabilities could have taken some of those firms by the hand and developed them with our years of experience a lot faster than SBA can by themselves.

So, why not set up—why didn't they consider something that I proposed over 2 years ago—a multitiered process, a program by which companies in group A only needed limited assistance as opposed to group B or C, which needed full assistance from SBA?

Why not use us—the Big Brother network, the Big Sister, whatever you want to call it—to help develop those firms? That wasn't

done. Instead they decided, as I said before, to have a St. Valentine's Day graduation, I'll call it, and throw the baby out with the bath.

I want to say that there has been excellent testimony already this morning—and I will keep mine brief. I will just reiterate that which you have heard before; some I do want to touch upon.

Size standards are crazy. How can you consider inflation in the rest of this economy and ignore it when it comes down to evaluating the size of small business? When you consider the amount of dollars that you spend—if your dollar today is only worth—what, 36 cents as opposed to what it was 5 years ago—how can you say that the size standard should be the same? It's crazy.

One of the issues that is a major negative, in Public Law 96-481 is the FPPT, fixed program participation term. The negative implications of that are severe. Everything is threatened. Everybody gets concerned—your landlord, your banker, your employee, the procurement officer at an agency where you are submitting a proposal is concerned because you are coming out of the 8(a) program, and how is that going to impact you and your sales. No matter how good your financials look; no matter that you made a profit last year, and are projected to make a profit for this next year—last year and this year; no matter what resources you have within the firm, in terms of the talent of your people. It doesn't matter how many Ph. D.'s you have on staff, how many people you have trained in high tech areas; it doesn't mean a thing. Coming out of that program is one of the most negative things that has impacted most of the companies that have just come out, because your base of business is threatened.

So, all of the things that you accomplished while on the program—and I have got to say that if it weren't for the 8(a) program, I would not be here today. I will not tell you that I got everything that was necessary out of that program, because I did not. Nor can SBA provide that to the firms. At certain levels, SBA just is not capable of taking the ball further. There is more needed. There was no postgraduate program considered. I said that they took most firms to a level of junior high, and said, "Now, go compete with the sharks."

My sharks happened to be Boeing, Computer Science Corp., EVS—I can go on, but I have got to tell you that, to give you an example of what I am up against, not that I don't think I will thrive or survive one way or the other, because I have been doing that all my life. I am a subcontractor to one of the firms on a proposal to one of the agencies now. The package that was submitted in this competition was 2,000 pages—2,000 pages in a proposal effort, which you may or may not win.

I don't know of many firms—minorities—that can afford to put out many 2,000-page proposals.

It is important that whatever you do with H.R. 863, the firms that have—and are coming out of the 8(a) program, be considered. A postgraduate program is crucial to the survival of minority business.

Minority business has come a long way from where it was; I mean, considering the fact that there weren't but so many of us

even in this country that had businesses 20 years ago. As short as 15 years ago, it has come a long way. It has a lot further to go.

But the investment that has been made, in minority business today, is about to go down the tube, if you are going to graduate another 500 firms, as I have heard from SBA over the next year, and another 200 after that, and you have not set up a system to deal with the fact that there are still some problems in our society that make it extremely difficult for us to grow and develop a business. You have not considered those things you are going to face that part of purgatory which sends you to hell in the not-too-distant future.

I employ 350 people, approximately, today. Other companies, like myself, may employ anywhere from 150 to 1,000. If any of them meet my profile, I have about 62 percent minority on staff; 60 percent of my total staff is female, and I am talking about people that run from the president's level all the way down to the file clerk who moved up to personnel management.

Who is going to employ those people? You cannot give me one majority firm in this country that matches my profile.

Mr. Chairman, and other distinguished members of this committee, H.R. 863, as you propose it, will help to dispel the 8(a) controversy and confusion; and make the Small Business Act and Public Law 95-507 meaningful to small business development.

Thank you.

[Mr. Mott's prepared statement follows:]

PREPARED STATEMENT OF RAY A. MOTT, PRESIDENT, RAVEN SYSTEMS & RESEARCH, INC.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I APPRECIATE THE OPPORTUNITY TO APPEAR HERE TODAY AND GIVE MY VIEWS IN REFERENCE TO THIS IMPORTANT AND MOST NEEDED LEGISLATION AS PRESENTED UNDER H.R. 863.

H.R. 863 WHEN ADOPTED, WILL REPEAL P.L. 96-481 MORE SPECIFICALLY, THE FIXED PROGRAM PARTICIPATION TERM. H.R. 863 WILL PERMIT 8(A) PARTICIPANTS A MORE REALISTIC CRITERIA FOR COMPLETING THEIR PROGRAM TENURE; NAMELY "COMPETITIVE VIABILITY" INSTEAD OF A FIXED TIME PERIOD. CLEARLY THIS WAS THE INTENT OF 95-507, AN INTENT THAT P.L. 96-481 DID NOT CAPTURE. THE PURPOSE OF THE 8(A) PROGRAM, AS ESTABLISHED BY P.L. 95-507, IS TO:

(A) FOSTER BUSINESS OWNERSHIP BY INDIVIDUALS WHO ARE BOTH SOCIALLY AND ECONOMICALLY DISADVANTAGED;

(B) PROMOTE THE COMPETITIVE VIABILITY OF SUCH FIRMS BY PROVIDING AVAILABLE CONTRACT, FINANCIAL, TECHNICAL, AND MANAGEMENT ASSISTANCE AS MAY BE NECESSARY;

(C) CLARIFY AND EXPAND THE PROGRAM FOR PROCUREMENT BY THE UNITED STATES GOVERNMENT OF ARTICLES, EQUIPMENT, SUPPLIES, SERVICES, MATERIALS, AND CONSTRUCTION WORK FROM SMALL BUSINESS CONCERNS OWNED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.

IT WAS NOT THE INTENT OF P.L. 95-507 TO PUSH FIRMS THROUGH THE 8(A) PROGRAM IN 3 TO 5 YEARS REGARDLESS OF VIABILITY. OBVIOUSLY P.L. 96-481 WAS NEVER PROPERLY BRIDGED WITH P.L. 95-507.

OVER THE YEARS SBA HAS BEEN PROVIDED WITH A NUMBER OF STUDIES CONTAINING STATISTICAL DATA ON HOW LONG IT TAKES FOR A FIRM TO BECOME VIABLE. SBA'S OWN LIBRARY AND DATA BANK SHOWS THAT THE DEVELOPMENT OF A BUSINESS FROM START-UP TO MATURITY OR COMPETITIVE VIABILITY, CAN TAKE FROM NINE TO TWENTY YEARS. IT IS IMPORTANT TO NOTE THAT THE INFORMATION USED TO DERIVE THIS DATA IN SBA'S REPORT IS FROM SUCCESSFUL COMPANIES WHICH HAD NOT "...SUFFERED THE EFFECTS OF DISCRIMINATORY PRACTICES." IT IS ESSENTIAL THAT THESE SBA STUDIES AND REPORTS BE USED IN CONJUNCTION WITH H.R. 863 TO FULFILL THE TRUE INTENT OF THE LAW AS STIPULATED UNDER P.L. 95-507.

THE 8(A) PROGRAM HAS, AND CAN, WORK TO ACHIEVE ITS PURPOSE WHEN IT IS APPLIED AS INTENDED USING SOUND BUSINESS PRACTICES AND POLICIES. I APPLAUD SBA FOR THE CRITERIA THAT WAS UTILIZED IN ESTABLISHING THE SIX MONTH INTERIM RULE, NAMELY NET WORTH AND INCOME. FOR THE FIRST TIME SBA USED A SOUND BUSINESS PRINCIPLE IN DETERMINING PROGRAM PARTICIPATION.

MR. CHAIRMAN, I ALSO FULLY SUPPORT THE PROVISION OF H.R. 863 WHICH "PROVIDES THAT NO PORTION OF THE GROSS RECEIPTS OR EMPLOYMENT OF A BUSINESS CONCERN ATTRIBUTABLE TO THE PERFORMANCE OF 8(A) CONTRACTS SHALL BE TAKEN INTO ACCOUNT WHEN COMPUTING THE SIZE OF THE CONCERN." THE USE OF 8(A) SALES TO CALCULATE SIZE PROVIDES AN ARTIFICIAL PRESENTATION OF THAT COMPANY'S SIZE. WHEN TERMINATED FROM THE 8(A) PROGRAM, THE 8(A) DOLLARS AND EMPLOYEES ON CONTRACTS FALL OUT; THE COMPANY IS ONCE AGAIN SMALL AND DISADVANTAGED. WITH IMPLEMENTATION OF H.R. 863 THIS SITUATION WILL BE REMEDIED.

MR. CHAIRMAN, THERE ARE NOT MANY FIRMS I KNOW OF THAT WANT TO, OR EXPECT TO STAY ON THE 8(A) PROGRAM FOREVER. WITH THE RIGHT PROGRAM TOOLS PUT IN PLACE, AS IS BEING STIPULATED BY H.R. 863 COMPANIES WILL HAVE A MUCH BETTER CHANCE OF COMING OUT OF THE PROGRAM WITH A BACHELORS DEGREE, INSTEAD OF COMING OUT WITH THE EQUIVALENT OF A JUNIOR HIGH SCHOOL EDUCATION AND TRYING TO COMPETE IN A WORLD OF BUSINESS THAT HAVE DEVELOPED A BUSINESS ACUMEN EQUIVALENT TO THAT OF A DOCTORATE DEGREE.

OVER THE PAST SEVERAL MONTHS RAVEN AND MANY OF THE OTHER GRADUATED 8(A) COMPANIES HAVE MARKETED AGENCIES AND HAVE BEEN DETERMINED TO BE TECHNICALLY AND FINANCIALLY CAPABLE OF PERFORMING AGENCY REQUIREMENTS. NEGOTIATIONS ARE STOPPED BECAUSE WE HAVE BEEN IDENTIFIED AS "OTHER THAN SMALL", AND NO LONGER ELIGIBLE FOR 8(A) OR SMALL BUSINESS SET-ASIDE PROCUREMENTS. AS ONE AGENCY RECENTLY PUT IT IN TERMS OF RECEIVING THEIR PROCUREMENTS, "WE ARE TOO LARGE FOR THE SMALL BUSINESS SET-ASIDES AND TOO SMALL TO COMPETE WITH THE MAJOR CORPORATIONS THAT RECEIVE THEIR BUSINESS. BEING IDENTIFIED AS "OTHER THAN SMALL" IS LIKE BEING IN PURGATORY AWAITING DISPATCHMENT TO HEAVEN OR HELL.

THE 8(A) PROGRAM HAS PROVIDED MYSELF AND OTHER SOCIALLY AND ECONOMICALLY DISDAVANTAGED PEOPLE THE OPPORTUNITY TO GROW TO A CERTAIN LEVEL. IT IS INCUMBENT UPON ALL THOSE CONCERNED THAT THE OPPORTUNITY FOR FURTHER GROWTH AND EDUCATION BE CONTINUED. TO STOP THIS PROCESS BEFORE ITS COMPLETION ROBS THIS ECONOMY OF A VALUABLE RESOURCE - THE FINANCIALLY VIABLE MINORITY BUSINESS ENTERPRISE.

MR. CHAIRMAN, OTHER DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE, H.R. 863 AS YOU PROPOSE, WILL HELP TO DISPELL THE 8(A) CONTROVERSY AND CONFUSION, AND MAKE THE SMALL BUSINESS ACT AWD P.L. 95-507 MEANINGFUL TO SMALL BUSINESS DEVELOPMENT.

Mr. MITCHELL. Thank you.

Thank you, all three of you, very much, for very good testimony. All three of you are no longer in the 8(a) program?

Mr. MOTT. That is correct.

Mr. MITCHELL. And to some extent and degree, I think there has been at least two statements to the effect that your current success was achieved by participation in the 8(a) program, not that it did everything that it could have done, but it certainly moved you to the point where you are.

Yet, while each of you are highly successful minority firms—there is no question about it—I sense from each of you that you are not now fully competitive. I have heard you discuss that you can't compete with IBM and Boeing and all the others, larger corporations that you are perforce to compete with, and I get a very uncomfortable feeling; are you saying that based upon just the sheer size of the corporate giants that you have to compete with, that you will never be competitive?

Mr. MOTT. I spent $68,000 on a procurement effort last year, which we lost. We came in as best in finals, but we lost. I spent $48,000 on a procurement effort for this year. The decision hasn't been rendered yet.

There is only so much we can do in competing in that arena. Companies of the size that we are talking about spent a year, a year and a half sometimes, marketing a particular procurement.

We cannot compete with those resources. Sometimes we get lucky, and we have got good sharp talent; we work 8 hours around the clock to do a number of things, but the system is not such that we are yet able to compete against a Boeing or an EDS, et cetera and win a specific percentage of those procurements, and the problem is that I do face them on a daily basis.

Mr. MITCHELL. My question more specifically is, do you ever contemplate any time in the near or distant future when you can compete with them?

Mr. MOTT. I have the core to accomplish that. I have the core that must continue to be developed to accomplish that, if the right system is set in place.

The reason I am pressing this is that those who support the force graduation program, a limited time in 8(a) status, say the real essence of the American economic system is your ability to compete, and that your business will never be successful until you reach that competitive level.

Mr. ADAMS. Can I take a crack at that?

Mr. MITCHELL. I really want to try to get a feel.

Mr. ADAMS. Let me take a crack at that, Mr. Chairman.

The 8(a) program itself is a very competitive program, and every time that someone says, "Can we compete?"—this is the truest form of competition, where minorities have been criticized for going out and having done the same things as the white brothers; hence, M Street, L Street, Connecticut Avenue—where they come here, and try to influence the Congress; try to influence the administration and to do everything possible to assure they're receiving their fair and equitable share of Government business.

Now, when you say "compete," it is a very, very broad term. When you consider that 85 to 90 percent of the Government dollar

is contracted out by the negotiated route—I'll say that again, via the negotiated route, same as 8(a).

Now, negotiation with the Federal Government, to do business, provide services for the Federal Government, is a method of competition.

It doesn't always mean that the low price wins, but it is price and other things considered.

Mr. Addabbo, I see, has joined us. He knows in defense, we don't want to send our boys off to war in a low-priced fighter plane, or a low-priced tank.

We want the best possible equipment for a fair and reasonable price. That is all the 8(a) program gives a man. It gives him the ability to sit down with the procuring agency to negotiate a contract.

Now, if you use that as a premise, then we are competing right now. Case in point: The largest contract that I received while I was in the 8(a) program was to do the quality control on the gas pipeline, the pipeline that was to be built from Alaska to Chicago. It was envisioned as the largest single construction that was to be conducted in the history of mankind.

The estimated cost was in the neighborhood of $40 billion, enormous thing. We got that contract, under the 8(a) program; however, the Department of Transportation saw fit to compete that contract, contrary to the law, while we, being businessmen, said, "Hey, they want to compete, we'll compete."

So, we teamed up with a white businessman, brother, and we said, "All right, whoever can provide the best team, wins the business."

We won that contract, I think there were eight firms. The proposal cost our company in the neighborhood of $70,000, just for the proposal. This was an 8(a) proposal. We won the contract; it was a 5-year contract for $37 million. It was the largest 8(a) contract at that time.

It meant that Unified Industries, a small company, was overseeing the Fluor Corp., was overseeing Northwest Gas, gigantic firms; and we worked directly for the Federal inspector.

In pronouncement by the Washington Post it was said that this was noncompetitive. It was competition in the truest sense; all the companies, the white companies, that were interested in bidding on this contract, teamed up with minority firms, 8(a) companies.

Those that were not interested didn't bid; so the whole spectrum of majority and minority firms were included in this competition.

The irony of it is, 2 weeks ago, I received a letter from the Federal inspector canceling the contract because they are not sure whether they are going to build the pipeline; so everything has been put on hold.

So, if you look at Unified Industries sales, well, it says that Unified received $70 million under the 8(a) program, and I have talked to Congressman Daub and told him:

> Hey, this is a game that is being played by that small element that has infiltrated our party, that is out to kill minority business, and to do away with everything that President Nixon started.

So, we are competitive.

There is no doubt in my mind that I am going to compete, and I am competing right now, every day. I don't know the meaning of not being competitive. I am still embarrassed when I read in the paper that the 8(a) program is a way to give noncompetitive—key word—noncompetitive contracts to minorities.

That is the biggest lie that has ever been told; if it is then we give 80 to 90 percent of our contracts to our contractors of the noncompetitive procedure, and I am sure that most of the Members of Congress will agree that a negotiated contract is a form of competition, because if the Government doesn't like the price and the conditions, they do not have to contract with you.

Mr. MITCHELL. I just have two other areas of questioning, and then I'll be finished.

The theory was when firms came out of the 8(a) program, there would be some other mechanism, sort of bridge program; the assumption was that the Minority Business Development Agency would provide that mechanism.

I am going to ask the question of each of you: "Has it done so?"

But before asking that question, I want to go on record. I had the pleasure and opportunity to meet with Secretary Baldrige, and we have been discussing this problem of graduation. I have discussed this problem with SBA and MBDA, and everyone else; but I frankly feel that for the first time, I have found someone in the person of the Secretary, who showed a genuine concern about the damage that might be done to minority businesses through forced graduation; and for the first time someone in government has come up with a graduation plan that seems logical and rational. I have fussed with this administration, and I have fussed with the Carter administration—I have fussed with all of the administrations; but I think we have to give credit where it is due, and I must confess that the early morning meeting with Secretary Baldrige was indeed a shot in the arm for me. I just hope that he will be allowed to follow through with his plans for a transition program.

Now, back to my question: "Has MBDA done anything helpful for you since you have been out of the program?"

Mr. MOTT. I would like to say that those companies that have come out of the program, have worked with MBDA from February 15 forward, up on the hearings.

Mr. MITCHELL. Right.

Mr. MOTT. I think we had February 13, roughly at that time——

Mr. MITCHELL. Anything concrete come out of it?

Mr. MOTT. We have had input into what kind of program would be developed. I believe they have worked with us. We have yet to see the results of that, but I do believe we are dealing with a sincere attitude at this point.

Mr. MITCHELL. Is that your thinking also, Mr. Davis?

Mr. DAVIS. That is my thinking. I certainly think that they are trying hard to help us—we have had several meetings over there; Commerce Secretary Baldrige and the President's Cabinet Council—we fully expect him to do something. That is the impression we get.

My only problem with that is that, you know, they had such a sense of urgency about getting us out of the program, and what I

don't understand is why didn't they have the program in place before they kicked us out of the program?

And I think that could have been done very simply. They have a sense of urgency about doing something about it now. It seems to me that the Small Business Administration could have delayed this graduation and worked in concert with Secretary Baldrige until they got something in place that would have been an orderly transition and we wouldn't have been kicked out feeling naked and very insecure and staff coming to work wondering whether they were going to have a job the next day or not.

Mr. MITCHELL. Mr. Adams.

Mr. ADAMS. Mr. Secretary, I feel very good.

Mr. MITCHELL. I'm not the Secretary.

Mr. ADAMS. I mean, Mr. Chairman. I feel very good about——

[Laughter.]

Mr. MITCHELL. Mr. Adams, please.

Mr. ADAMS. I feel very good about what the Secretary of Commerce is doing in our regard. I met with the Secretary of Commerce; in fact, I know him well. We worked on the campaign together, to elect Mr. Reagan; in fact, he asked me to join his staff right after he was nominated as Assistant Secretary, and I declined because I felt that this fight was coming about; and indeed it is here.

I can also guarantee you that Secretary Baldrige typifies the heart of the Republican Party.

Mr. MITCHELL. There, now.

Mr. ADAMS. I know you wouldn't agree with that.

Mr. MITCHELL. No, no. I said that we are bipartisan.

Mr. ADAMS. I just have to say that, Mr. Chairman. In view of the fact that I am a member of the Senatorial Trust, I discussed this problem with Dick Lugar, who was also surprised and has taken action, as have other Senators—I have discussed it with Paul Trible and John Warner, and they are very, very disappointed at the way this State is being helped, and I will assure you that Mac Baldrige will come up with a program.

Now, how much damage will be done to our firm in the meantime, in the interim, while he gets this program in effect, is questionable.

But it is not all white; it's Black Joe.

Mr. MITCHELL. I know I am over my 5 minutes, but I would ask the indulgence of my colleagues to just put one more question.

I am going to give you some data, and I want your thinking as to how these circumstances have come about.

In 1981, financial grants and loans and guarantees by Federal agencies to minority business were $2,869 million; by 1982, it had dropped to $1,145 million.

In terms of minority business loans, in 1981 the number of loans was 5,240; and in 1982 the number of minority business loans was almost cut in half; they were down to 2,500, let's say. In 1981 the amount of the loans was $415 million but in fiscal 1982 the amount was cut in half down to $216 million.

In 1981 the percent of procurement from minority business was 3.4 percent; in 1982, it had dropped to 3.2 percent. Now, that is a

small percentage drop, but when you translate that into dollars, of course, it is pretty significant.

In your thinking, what accounts for this almost halving of the effort? Would would you give me some explanation for this, please?

Mr. ADAMS. Yes, Mr. Chairman. Yes, sir. My answer to that question is going to be somewhat based on theory. It is going to be a theoretical answer.

Right after the election, right after the change of the administration, there were those that perceived that the Republican Party was antiminority; that the President was antiminority, antiblack, and in many cases there was a signal. This change was a signal for them to pull back and retrench on many of the programs that had been started even under the Republican administrations, and vent their anger and dissatisfaction with the gains that minorities had made.

And the signal went out and it is still in effect in a lot of agencies, that the word is "Go slow on helping minorities."

This is a very difficult thing to do, because no one will put it in writing. No one will make it a matter of the record; no one will come before Congress and testify to this, but this has permeated the system.

Since this whole thing started, the graduating companies that were supposed to be so successful: too big, too rich, too powerful. I know of one that has already gone bankrupt.

Mr. MITCHELL. All right. Let me quickly get to Mr. Davis, and Mr. Mott.

Was it that there was confusion; that is one possible answer. Was it possible that in the change of administration people were put in who really didn't know what they were doing, and everything just sort of stopped for a while?

Mr. DAVIS. I agree a lot with what Ted just said, but I think that the wrong signal went out. You know, I am not saying that this signal was an accurate assessment of the President's attitude so far as helping minority business. I am not saying that was accurate. I am certainly not accusing the President of racism; but I am saying that probably from the top the wrong signal was given; and I don't think it has been made quite clear enough at the President's level in terms of setting or creating the right kind of environment for minority business to flourish and be successful in this country.

Mr. MITCHELL. Mr. Mott, would you respond very briefly.

Mr. MOTT. Ted used a key word—a "signal."

We have heard it a long time, the last 2 years now. A signal went out to the business community, and to the Government agencies that this administration was not that concerned about minority business.

Rightfully or wrongfully, that has been the problem for us. That has not been changed. I also hear that even though some of the upper level say, "This is really what we want to accomplish," as the President has made a statement that I thought was positive, was looking forward to a statement for a long time; it finally came, but I do not see the support down at midlevel management to implement those things to support the fact that he may be supporting minority business. So, that signal out there is still negative as it relates to minority business.

Mr. MITCHELL. Thank you.

I will call on my colleagues in order of appearance and start on my far left.

Mr. BOEHLERT. Mr. Adams, I am somewhat disturbed by your statement because I really—and I am a newcomer here, I should stress that, but I really don't think there is any need to apologize for a party. I don't think there is partisanship here. I don't think there are any sinister motives. I think there is some selfishness evident; and I would illustrate that in a couple of instances that have come to my attention.

One, for a long, long time, a number of Members of Congress tried very hard to convince administrations, Republican and Democrat alike that the Department of Defense should target contracts to labor surplus areas. It made an awful lot of sense; devote the effort and resources to those areas in greatest need; and there was a little obstacle in the way called the Maybank amendment.

And it took years and years and years, and finally under the leadership of Mr. Addabbo, that was repealed; and finally, the Department of Defense has the vehicle to target contracts to labor surplus areas. They are not really doing it yet, but at least they have the vehicle.

Then, second, right in this Congress, during the debate on the jobs bill, there was a determined effort to target a good portion of that money to areas that were most distressed. That made an awful lot of sense, and yet there was opposition to that too. How could any reasonable and prudent man oppose that; but they did.

Finally, it was passed, and now I think with minority business, I think quite frankly part of the problem is in the Congress itself.

Take my congressional district, as an example. A limited minority population, very few minority businesses, therefore, you might think that I would have a different agenda and not be concerned about the problems. That is not the case at all. I am very concerned, and that is why I am here.

But I cite these three examples because I feel very strongly, Mr. Adams. Mr. Mott, you didn't indicate your registration, but two out of three ain't bad. [Laughter.]

Mr. ADAMS. This is a rare occasion.

Mr. BOEHLERT. It should not be an indictment of the party. There are concerned Republicans and concerned Democrats, and there are others that I don't care to associate with on both sides of the aisle. So, I would please ask you to consider that a little more carefully. I wouldn't want that misinterpreted.

Let me ask you this, Mr. Adams. You have a lot to offer—and so do you, Mr. Davis, and Mr. Mott.

Are you consulted? Do people seek you out from SBA to ask your opinions, to talk with you on this, to seek your views?

Mr. ADAMS. Congressman Boehlert, no. Not in the current administration.

In prior administrations, they used to, as under the Ford administration, and the Nixon administration, and even the Carter administration.

There was a group of businessmen who sat down and worked with the Small Business Administration to try to help create order out of chaos. We were the ones who spoke up against the fronts,

and we demanded that action be taken to eliminate them. We also recommended that any front organization, anybody who wanted to rip off the Government should be put in jail for 5 years; and we asked that legislation be enacted to this end.

Under the current administration, even when the transition team was put into effect, we wrote memorandums and letters as to how we felt—black Republicans, that is, that the 8(a) program should be straightened out because we were disturbed by the way that it was going, but still it was the only game in town.

Insofar as we apologizing for the Republican Party, or indicting the Republican Party, I would like to apologize because that was not my intention.

Being a member of the Congressional Leadership Council which helped get you here and the Senatorial Trust, and being a lifetime member of the Republican Party, with my name in gold or brass in the RNC, I don't feel that I should have to apologize.

However, I am apologizing for some of the actions that were taken, and have been taken by misguided individuals in our party, that have so alienated the minority population that we are being labeled, unjustly, for something that we are really not.

Mr. BOEHLERT. Mr. Adams, you mentioned infiltrators. I have the impression that you have a feeling that there are those in SBA that are consciously trying to undermine the program?

Mr. ADAMS. Yes, I do.

Mr. BOEHLERT. Is it small in number?

Mr. ADAMS. No; but it is very well organized.

There was a memorandum or book that was put out by individuals who are very powerful that belong to the groups such as the Associated General Contractors. There is another legal group, and I can't think of the name of them, that was formed, that was very active in challenging the case *Fullilove* v. *Kreps*. I believe it was in that particular memorandum that was published, that indicted the 8(a) program as being wrong, unjust and what have you.

And I note that members of that task force were such people as Mr. Coors, who is very active in our party, as you know; and Jim Williams, the financial vice president of Dow Chemical. When I see organizations come out in a systematic way against minority business programs, I know that these same individuals will try to put people in our administration that follow their views, even though they may not necessarily be the views of the overall party or the Congress itself.

We are not so naive to think that our competition is not our competition in all ways.

Mr. BOEHLERT. Thank you.

Nothing more, Mr. Chairman.

Mr. DAUB. Gentlemen, I have questions for all of you; and, Mr. Chairman, I may take more than my five, if I may.

I would refer to firms as "disadvantaged," as opposed to black. My wife and I fill out a census form every year. She happens to be Korean. Our children are listed as "Other," because there is no category for them to be listed in otherwise.

I am a successful business person. I am privileged now to serve in Congress. In Omaha, Nebr., we have 500 disadvantaged and minority firms. The minority purchasing council just held an awards

banquet out there. Most of those firms are black; and in my small business community, in Omaha, Nebr., as the chairman knows, they all envy of the 25 percent of the total 8(a) moneys set aside to firms who do business in Washington, D.C.

Well, it is understandable, is it not, that very few Federal dollars get out to a place like Omaha, Nebr., where there are disadvantaged potential participants in a program like this; the dollars just aren't there for a large number of people to register, apply, qualify, and then compete; and I agree with Mr. Adams' definition of competition within 8(a). I want it understood that I am a firm supporter, as the chairman knows, of the 8(a) program.

But, indeed, there are a lot of little people out there who are disadvantaged, that don't have a shot in competing the way you have had a shot at competing.

So, as you start to rank on a scale of how people feel, they are within the whole family of some 2,129 firms in the 8(a) portfolio right now. A lot of them—at least confidentially, will tell me that they don't like the fact that you all have been in so long.

Just as a matter of course—and I am sure you are aware of that potential criticism—so indeed as I look at the opportunity to advance the principles that the 8(a) program was set up to achieve. I indeed have to commence to ask questions, and I asked questions first of all by letter to the SBA.

I asked them for a complete analysis of each of your firms. I have it here in front of me. I have the financial information that demonstrates indeed the significant and substantial success that each one of you and the hundreds of employees whose paychecks you have been responsible for have, I guess, by and large, resulting from the 8(a) connection, if you will.

I look at your net worth, and your total assets climb in years of 1980, and 1981, and 1982, when many small and disadvantaged firms in my district were closing and taking bankruptcy, because there weren't enough Government contracts around for them to be hooked into a way in which they could survive. Indeed, I would suggest, Mr. Chairman, that the economic circumstances surrounding your numbers may, in aggregate, show that all other businesses were affected in the economic throes of double-digit interest rates and double-digit inflation rates in the 1980, 1981, 1982 timeframe, too. The demand for money just went down.

And a lot of things that Government was doing would find smaller numbers and smaller percentages, because indeed you have to compare to what aggregates, as you look at what 8(a) is doing, in terms of number of awards, and number of dollars that are in the program.

Indeed, small firms, as I think you all will recognize, if they are disadvantaged, have trouble getting the money to even submit the proposal.

Right?

Mr. ADAMS. That's right.

Mr. DAUB. They have a tough time, getting a foothold even, to get involved; let alone get qualified, go through the paperwork, get in the program.

So, I want to try to put the perspective about 8(a) or disadvantaged firms.

You know, when I was a boy, I grew up thinking a pot was a place you sat, and grass was something you cut. You know, the definition of those words has changed now, hasn't it? There are different meanings; so rather than say, black or white, I would like to keep this a program as an 8(a) program for disadvantaged businesses that need an opportunity to compete within the system.

At least, that is going to be my perspective, as I now pursue each of you in some questions, because I want to talk to my chairman first, to say that Mac Baldrige held my seat in Congress some years ago, Mr. Chairman—Omaha, Nebr., proudly claims—his dad, rather, held my seat; and that Mac was born and went to high school in Omaha, and I know him well, and I have worked with him on the graduating program now for over a year.

I would like to say that part of the seed that has been sown for his interest in achieving a potential further connection for you who are graduating, whether you like it or not, is indeed real, and indeed I think you are going to be very pleased at the opportunity that this program will present to you. But, for the process of——

Mr. MITCHELL. Will you yield to me?

Mr. DAUB. Indeed, I will yield.

Mr. MITCHELL. Just for one brief second. I just want to make the record clear at this point.

With reference to the dollars that were available, the total procurement. In 1981, the total procurement was $120 billion; in 1982, it went up to $136 billion, so it wasn't a question of——

Mr. DAUB. Indeed, but on the disadvantaged firm problem, within the stream, within the flow of their ability to get in, become certified, and then compete, the numbers game has to be looked at in comparison to the flow, and a lot of those firms couldn't even get the doors open half the time when the interest rates were 21.5 percent.

Mr. MITCHELL. I agree, but I just wanted to clear up the matter that the total procurement had indeed increased from $120 billion to $136 billion.

Mr. DAUB. I hope so, too, Mr. Chairman; because the Government ought to be sending more of its money out of the system to operate in the private sector, and I think that is right.

But I can tell you that I am going to continue to work on this program with Mac, to make sure that the three of you—your firms—have opportunities in the graduation process for getting unhooked—it is like detoxification, you know, and it is always very difficult to ask when that line ought to be drawn.

When the Government draws that line, and somebody is going to be on one side of it, and somebody is going to be on the other side of it, no matter where we do—20 years from now, if we drew the line, we can make out a case that it was too soon.

Well, the process again has to be a little bit more in focus; and I look at this program as one in which we ought to be giving everybody a chance to participate, but nobody is going to be able to guarantee it that you are going to be able to compete, just give you the tools to learn how to compete; and nobody is going to be able to guarantee you that you are going to be able to compete with the giants in your chosen industries.

Mr. Davis, tell me, what percentage of your total sales is not non-8(a) today, versus 5 years ago? Just as near as you can recall?

Mr. DAVIS. Non-8(a) today?

Mr. DAUB. Yes, versus 5 years ago.

Mr. DAVIS. It is about 60 percent.

Mr. DAUB. Today?

Mr. DAVIS. And I am guessing.

Mr. DAUB. Sure. I appreciate that. Sure.

And how about 5 years ago?

Mr. DAVIS. Five years ago, it was probably——

Mr. DAUB. 1978.

Mr. DAVIS. 1978. It was probably——

Mr. DAUB. Of your total business.

Mr. DAVIS. About 98 percent.

Mr. DAUB. About 98 percent.

What do you think it might be next year, now that you are terminated?

Mr. DAVIS. Well, I am terminated from the 8(a) program, and it will probably remain the same next year, because——

Mr. DAUB. Carryover?

Mr. DAVIS [continuing]. What we are doing, is we are concluding some options.

Mr. DAUB. I see.

Mr. DAVIS. It may not change appreciably next year.

Mr. DAUB. So, you have business on the books, now, that has dynamics of a year or two, and options, and things like that essentially were contracts negotiated while qualified for 8(a) business?

Mr. DAVIS. For about a year, we have business on the books for about a year.

Mr. DAUB. So, you have about another year's worth of business on the books?

Mr. DAVIS. We've got another year's worth of business on the books.

Mr. DAUB. So that 1983's levels might be at 60 percent, too?

Mr. DAVIS. So, the thing about it, you see—say, we got another year on the books; that is a very short time, when you are trying to penetrate the commercial market, because when you are trying to penetrate the commercial market, it involves establishing relationships; and the old boy system doesn't work as well for us as it does other people, so it does take more time.

Mr. DAUB. Well, it depends, I guess——

Mr. DAVIS. It depends on whether you are black or white.

Mr. DAUB. Well, I just want to leave that on the table with you for another day's discussion, OK?

I would like to work with you, and work together with you on making the 8(a) program the program you enjoyed, that gave you a net worth climb from [deleted] that say business go from [deleted] to [deleted] in terms of total liabilities; that assets rose over [deleted].

[Dollar amounts were deleted by Republican staff during editing of hearing transcript.]

Mr. DAVIS. I don't understand why you are passing out my proprietary information here in public.

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Mr. DAUB. This is my information provided to me in a profile, provided to me in a file, which is public record.

Mr. DAVIS. No; it shouldn't be public record. I mean it was to SBA, and it is not public. I don't have any problem with you having it, but I do have a problem with you reading it out here in public.

Mr. DAUB. Let me not read further, but tell you that you have done well, have you not?

Have you not done well?

Mr. DAVIS. I said that in the beginning.

Mr. DAUB. Let me ask you this. If 60 percent of your business is 8(a), is any of your business Government, but non-8(a)?

Mr. DAVIS. Some is Government that is non-8(a).

Mr. DAUB. Can you tell me that you have ever taken a contract from one of the big fellows that you described a minute ago in your——

Mr. DAVIS. No.

Mr. DAUB. Have you ever been able to win a bid against them, in the same bid?

Mr. DAVIS. No.

Mr. DAUB. What do you think accounts for that?

Mr. DAVIS. Well, a number of things that accounted for that.

One, my staff hasn't developed to the place where they can compete with some of the big companies.

For instance, if I were bidding a job, say, against, Allied——

Mr. DAUB. OK, say, Allied. Let's take them as an example.

Mr. DAVIS. Yes, one of the major firms.

Mr. DAUB. What are you missing from their ability to submit a bid?

Mr. DAVIS. When they get ready to bid on a building to clean it, they send in industrial engineers.

If they decide they want to take that building; if it is important enough for them, they can do it for—they will go in and bid for much——

Mr. DAUB. So, they will undercut you?

Mr. DAVIS. They will undercut me; but they have a reason in mind; they are not being foolish. It is a definite marketing strategy that they have that I can't compete with.

Mr. DAUB. Will you ever be able to compete with them on that basis, then?

Mr. DAVIS. Well, I certainly hope so, but it is going to be many years down the road.

Mr. DAUB. Would 8(a) potential, even in the graduation program now, give you that ability to compete with that kind of a company?

Mr. DAVIS. Yes; because what would happen is, you see, I would always have a base to operate, to keep my company functioning, and if I decided that I wanted to go after a contract for any reason other than having a wide profit margin—and there are legitimate reasons for doing that sometimes, then I could do the same thing.

Mr. DAUB. Then would you be better off if you didn't have to be classified as a disadvantaged business in the first place? Do you see my point? You sort of had a label hung on you, didn't you?

Mr. DAVIS. Well, listen——

Mr. DAUB. I wondered about that.

Mr. DAVIS. I would much rather not be disadvantaged, a minority, you know—I would much——

Mr. DAUB. No, no——

Mr. DAVIS. I didn't follow that to happen.

Mr. DAUB. Do you follow what I am saying though? Do you think that disadvantaged you, as you were moving up the scale of business success?

Mr. DAVIS. Of course, it has been a disadvantage. It hasn't been a disadvantage, because the problem is we need the support of the Government in terms of procurement to ever be able to compete with these major firms. We just don't have it; it is going to be a long time coming. I hope it comes. I wish it was there tomorrow.

Mr. DAUB. Do you see my point though?

I listened to you in your testimony a minute ago, and you said, you know, disadvantaged, and all. However you explained it, and I sit here saying, "Well, maybe one of the problems is that the program itself has set up some classifications, that may have made it very difficult for you to get further ahead than you are now."

Mr. DAVIS. Let me tell you something.

Mr. DAUB. Do you think that is possible?

Mr. DAVIS. No; not with me.

Mr. DAUB. No.

Mr. DAVIS. Let me just tell you something.

First of all, the disadvantaged and the minority thing, I certainly have not tried to use that as a kind of crutch. I would certainly like to make a conscious decision to grow as big as my financial and management capabilities will allow us.

I think we have taken all of the right steps. When I got out of the Army and started into this business, I decided that I was going to learn as much about it as I possibly could. We went and spent time and money up at the Harvard Business School, and took advantage of the smaller company management program.

I don't have any problems with my personal management and our capabilities of doing things. I frankly think that if I had to, I could run General Motors.

Mr. DAUB. I think you could, too.

Mr. DAVIS. But the point is, we are really not—it seems like the structure of our society, and the things that we have to deal with, which I am not sure that you are aware of, and I am not sure that I can explain it adequately.

Mr. DAUB. All right.

Mr. DAVIS. It just happens that these opportunities elude us—like, if I go up against a big company——

Mr. DAUB. In other words, are you labeled, by being an 8(a) firm; that is what I want to know.

Mr. DAVIS. Well, the thing about it, if I bid against Allied——

Mr. DAUB. Yes.

Mr. DAVIS. OK—there are some things that Allied can introduce that I don't have—for instance, that the building that I might be bidding on against Allied, a member of the management staff of Allied might be on the board of directors of the company that owns the building, which gives him a little bit of an edge; and I am not privy to being in that select——

Mr. DAUB. Have you ever hired anybody from one of the bigger companies to work for you?

Mr. DAVIS. Of course, I have.

Mr. DAUB. Well, let me go on to Mr. Mott.

You have been extremely successful; what is your percentage of 8(a) business right now? On the books? Your total business?

Mr. MOTT. About 80 percent.

Mr. DAUB. How much will carry over for another year or two or three?

Mr. MOTT. How much business?

I will lose some next year.

Mr. DAUB. OK, we have some going in 1984?

Mr. MOTT. Right.

Mr. DAUB. And how about into 1985?

Mr. MOTT. Yes.

Mr. DAUB. That you have currently got on the books?

Mr. MOTT. Right.

Mr. DAUB. How much will be on in 1986? Can you look that far ahead to see what your options will be? Without the MB—without the graduate program—now, just what you have got on the books now—how much may be around in 1986?

Mr. MOTT. A minimal amount.

Mr. DAUB. Twenty percent of your business?

Mr. MOTT. I couldn't give you an exact figure, but that's a good carryforward range.

Mr. DAUB. In that range?

Mr. MOTT. Yes.

Mr. DAUB. Can you compete with the giants in your industry?

Mr. MOTT. No.

Mr. DAUB. Can you ever compete with them?

Mr. MOTT. Yes.

Mr. DAUB. I heard most of your answer to the chairman a minute ago, and is there anything you need to do that that you can't get right now?

Mr. MOTT. Yes.

Mr. DAUB. What is that?

Mr. MOTT. I can't change my color. One. And I can't—you know, I was listening to you ask Jerry questions, and obviously just—it is not getting through to you, and maybe he can't explain it or I can't either.

And I market my business, and my capabilities as a business person, and my staff, I promise you. We have been respected because of our competence in the areas that we deliver our services——

Mr. DAUB. But you are still held back because you are black?

Mr. MOTT. We have performed on a number of different kinds of contracts. There were times when we fought the battle in some agencies where they said, "Well, Raven has got a $250,000 contract; they don't need any more."

I was doing about $1 million in sales, I guess, at that time.

Mr. DAUB. You mean, you had an 8(a) contract already, so you don't need another one.

Mr. MOTT. No; I had a contract for $250,000 at that time, from that agency.

Mr. DAUB. From that agency. OK.

Mr. MOTT. Yeah. But because of who I was, I didn't need any more.

Mr. DAUB. OK.

Mr. MOTT. There are many problems you deal with plus the fact that—and I will answer the questions fully. If one of us fails, sitting here at this table, we take down 100. If one of us succeeds; we can maybe help up 20, in the minority business community.

Mr. DAUB. It is more than that.

Mr. MOTT. No, wrong. We don't benefit from the positive image, as much as we do from the negative.

OK, because we are black. The visibility for us is very high, and the visibility is very negative. Why?

We took 21 firms that are labeled other than small which became a negative connotation instead of a positive, became negative because we are bigger than most of the other smaller firms in our industry——

Mr. DAUB. Yes.

Mr. MOTT [continuing]. And that became a severe negative. Why wasn't it positive? Because we are black.

Mr. DAUB. Yes.

Mr. MOTT. If we fail, the credibility in the black community is again impacted because the majority businessman decides that they can't do it.

Mr. DAUB. Will you fail?

Mr. MOTT. So, when we fail, we take down 100.

Mr. DAUB. But you are not going to fail, are you?

Mr. MOTT. I am sitting in the chair of 1 of the firms that just went bankrupt, out of the 21.

Mr. DAUB. Your firm went bankrupt?

Mr. MOTT. No; because he is in bankruptcy court, no, not my firm.

Mr. DAUB. Whose?

Mr. MOTT. It was 1 of the firms in the 21.

He was in bankruptcy court today.

Mr. DAUB. Can you tell me which one it is so I could check?

Mr. MOTT. I don't know. I don't have the name offhand. He is out of Seattle, Washington.

Mr. DAUB. Do you know which one it is?

Mr. MITCHELL. P&B Services, Inc. May I submit this letter for the record at this point?

Mr. DAUB. Sure.

Mr. MITCHELL. And read part to you.

I would like to express my appreciation for your extended invitation to the scheduled legislative hearings on H.R. 863. I am sorry that I'll be unable to attend due to a scheduled appearance for our Chapter XI hearing in Federal Bankruptcy Court.

I ask that it be submitted for the record.

[The material referred to above follows:]

SERVICES INC.

1931 SO. FAWCETT ST.
TACOMA, WA 98402
(206) 383-3716

April 15, 1983

HONORABLE PARREN MITCHELL
HOUSE OF REPRESENTATIVE
COMMITTEE ON SMALL BUSINESS
2361 Rayburn House Office building
Washington D.C. 20515

Dear Congressman:

I would like to express my appreciation for your extended invitation to the scheduled legislative hearing on H.R. 863. I am sorry that I'll be unable to attend due to a scheduled appearance for our Chapter 11 hearing in Federal Bankruptcy Court.

Although I am unable to attend, I would like to voice my support of H.R. 863. If this amendment had been in place before now, surely P&B Services Inc. wouldn't find itself in a reorganization, which can certainly be attributed to an unjust interpretation of our company being a "large business". It's unquestioned that other 8(a) firm will benefit from these justifiable changes.

As you are aware, P&B was one of the 23 companies terminated from the 8(a) Program, February 15, 1983. Our company entered the 8(a) Program in 1973, in mess attendant services and expanded into the base maintenance field. During 1980, employment reached as high as 1,000 employees which represented wages totaling 97% of sales (10,524,000). This is significant when realizing that in 1973, the hourly rate of pay was $3.41 (mess attendant size standard 5.5 mil), compared to average hourly wages of $9.07 (base maintenance size standard 7.5 mil). With no corresponding adjustment in the size standard over those years, thus the issue of deciding a company's size on total sales, without consideration of the other factors under the Sec. 124.1-5(d)(2)(1) of the SBA rules and regulations, surely was unjust to a striving small company.

In considering the labor cost of P&B Services, the H.R. 863 provision for excluding labor cost from gross receipt to determine size seems more consistent with the intent of the SBA program purpose in 1969, that being providing employment to the unemployed.

Its my hope, that such an admendment will not only provide a greater opportunity for 8(a) companies to become competitive but will also stimulate employment.

Regarding the other proposed admendment, those being: (a) criteria for graduation/termination and (b) due process guarantees for 8(a) firms. These two should not only provide the 8(a) participant the opportunity to set realized goals and objectives but ensure standardization of measurement in evaluating the company's performance against its business plan and non 8(a) firms. In addition to reasonable assuring that decision recommended by SBA personnel are based on all guidelines as set forth under this admendment.

In closing, I would like to thank those, who have made it possible for our company to participate under the 8(a) Program.

Sincerely,

Harold J.X. Botley, President
P&B Services, Inc.

HJXB:oc

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BY HAND

September 11, 1981

Mr. Robert L. Wright, Jr.
Assistant Administrator for MSB & COD
Small Business Administration
Room 317
1441 L Street, N.W.
Washington, D.C. 20416

Re: P&B Services, Inc.

Dear Mr. Wright:

In our letter dated August 25, 1981, we noted our appeal from a decision by the Regional Office (Region X) of the Small Business Administration not to renew three 8(a) base maintenance contracts with P&B Services, Inc. ("P&B") to be performed at Keyport, Puget Sound, and Whidbey Island naval facilities. In that letter, we requested that the Small Business Administration refrain from awarding those contracts to, or matching up those contracts with, firms other than P&B prior to the final resolution of our appeal. We understood that we would be advised by the Small Business Administration of the procedure and schedule for hearing and deciding our appeal. To date, we have received no such information from the Small Business Administration.

As these contracts are scheduled to expire on September 30, 1981, it is urgent that the issues raised in our appeal be resolved promptly. We request that you confirm that the Small Business Administration has not awarded those contracts or committed itself to award those contracts to

firms other than P&B. We also request that you advise us when, during the week of September 14, we may be heard on the issues identified in our August 25 letter.

Thank you for your attention to this matter. We look forward to hearing from you very soon.

Sincerely yours,

Samuel C. Jackson

SCJ:mmb

cc: Richard M. Philben, Director
Office of Program Surveillance
and Assistance
Robert F. Caldwell

Stroock & Stroock & Lavan
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April 13, 1982

VIA FEDERAL EXPRESS
Mr. Stephen J. Hall
Regional Administrator
U. S. Small Business Administration
710 Second Avenue
Seattle, Washington 96104

Re: P&B Services, Inc.

Dear Mr. Hall:

We represent P&B Services, Inc. on several matters regarding its participation in the 8(a) program. During the past three months, P&B has complied with all requirements for fixing its term of participation in the 8(a) program. The facts, however, indicate that SBA has not negotiated in good faith with P&B to establish a reasonable participation term. Therefore, we request that you vacate the flawed participation term established for P&B by the District Office and negotiate or otherwise establish a proper and reasonable term of participation.

P&B has attempted to negotiate a participation term with SBA consistent with its progress toward competitive viability. In January 1982, P&B submitted to SBA a revised business plan that proposed a participation term of three years. The Seattle District Office responded by proposing the minimum participation term of one year, which allegedly would have been increased if so justified by P&B. The Company responded by providing justifications to the District Office based on its current economic condition and business exigencies. For example, P&B explained that additional time in the 8(a) program was needed to retire a major, unforeseen liability arising from settlement of a lawsuit by a former officer against

the Company.[1/] As another example, the Company explained that a longer period of participation in the 8(a) program was required because actions initiated by SBA's Central Office disqualified P&B from the non-8(a) small business market, resulted in layoffs or terminations of over one-third of the Company's work force, and placed the Company at a substantial economic disadvantage.[2/]

The District Office ignored P&B's justifications, however, and recommended a participation term of one year to your office. By your letter dated March 29, 1982, you have required that P&B accept the one-year term if it is to participate further in the 8(a) program.

It appears from these events that SBA has not engaged in any meaningful negotiation with P&B. It also appears that SBA has not considered the business exigencies of P&B. Instead, SBA fixed a precipitate end of P&B's eligibility that has little, if any, relationship to the competitive viability or economic disadvantage of P&B. SBA thus breached the clear intent of Public Laws 95-481 and 95-507 and the requirements of 13 CFR §124.1-1(c).

1/ We understand that the suit was settled in January 1981 on terms that required the Company to forgive loans and advances of at least $100,000 and to repurchase stock for $210,000 plus interest. We further understand that the required forgiveness and repurchase obligation have had severe effects on P&B's financial condition that are evident from the Company's financial statements.

2/ The actions initiated by the Central Office included a size determination that found P&B to be other than a small business and a decision to divert two contracts previously performed by P&B to other companies. As a result, the commercial line of credit that P&B had established was reduced by approximately $500,000, which required the Company to offer all unencumbered assets as collateral for a supplemental line of credit required to meet payroll and direct costs of performing its contracts.

On behalf of P&B, we request that you rectify what appears to be an improper application by SBA of law and required procedures. We hereby request that you retract the Participation Agreement that accompanied your letter to P&B of March 29, and that you establish a participation term consistent with P&B's prior development, current economic position, and goals for competitive viability. To ensure that an appropriate term is established by April 21, I would be pleased to meet with you at the earliest convenient time. Please let me know when that meeting could be arranged.

Sincerely,

Samuel C. Jackson

Samuel C. Jackson

cc: Harold Botley

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June 1, 1982

BY HAND

Mr. James Sanders
Administrator
U.S. Small Business Administration
Room 1000
1441 L Street, N. W.
Washington, D. C. 20416

Re: P&B Services, Inc./Appeal of Regional Administrator's Decision

Dear Mr. Sanders:

This firm is counsel to P&B Services, Inc. ("P&B") regarding legal matters arising from its participation in the 8(a) program. On behalf of that firm, we hereby appeal to you concerning a decision of Stephen Hall, Regional Administrator of Region IX, wherein the 8(a) subcontract for base maintenance services at Fort Lewis, Washington, now being performed by P&B was awarded to other 8(a) companies in a highly questionable, if not improper, manner. We request that the Central Office take remedial action by rescinding that subcontract award, conducting a full investigation regarding the negotiation and award of the subcontract, and reopening the procedures for selecting the 8(a) subcontractor and the negotiation of the subject subcontract specifically to include P&B.

For several years, P&B has successfully provided base maintenance services at Fort Lewis, Washington, under an 8(a) subcontract. Due to the firm's satisfactory performance and the economies inherent in P&B's continued

provision of such services, renewals of the subcontract were regularly awarded to P&B. The Company justifiably expected that it would negotiate for the upcoming renewal of the subcontract while devoting its business development efforts toward non-8(a) contract support.

Revenues from the subcontract are critical to the viability of P&B's business. The subcontract provided more than one-third of P&B's total receipts during its last full fiscal year and substantially all of its 8(a) receipts during the current year. Revenues from the subcontract now secure P&B's commercial credit arrangements and maintain its business. P&B has no other source of contract support, through the 8(a) program or otherwise. Renewal of the subcontract thus is necessary if P&B is to meet the goals of its revised business plan and 8(a) participation term. Accordingly, P&B formally requested that the subcontract be set aside for its performance in the upcoming contract cycle.

We now understand that the Seattle District Office has selected a joint venture of two other 8(a) companies and has awarded the subcontract to that entity. At no time during the selection of the subcontractor or the negotiation of the subcontract was P&B notified of the proceedings or allowed to participate or negotiate to protect its interest. We also understand that the Seattle Regional Office has approved the foregoing actions, which contravene the SOP and specific representations made by personnel in the Regional and Central Offices regarding the opportunity for P&B to participate in negotiations for the subcontract renewal.

We have so far been unable to engage personnel in the District or Regional Offices in meaningful discussions regarding this matter, notwithstanding our letters, telegrams and calls to them. Therefore, we must appeal the wrongful exclusion of P&B from participation in the negotiation and award of the renewal of the Fort Lewis subcontract as arbitrary, capricious, and not in accordance with existing law and regulations.

I request an opportunity to meet with you to present more fully the basis for our appeal. Pending resolution of this matter, we request that the Central Office rescind the award of the Fort Lewis subcontract renewal and direct the District and Regional Offices to take no further action regarding the award or performance of that subcontract by any firm other than P&B.

Sincerely,

Samuel C. Jackson Jr

Samuel C. Jackson

cc: Dr. Robert Wright
Harold Botley

SBA

U.S. Small Business Administration Washington, DC 20416

AUG 2 - 1982

Samuel C. Jackson, Esq.
Messrs. Stroock & Stroock & Lavan
1150 - 17th Street, N. W.
Washington, D. C. 20036

Dear Mr. Jackson:

Mr. Sanders has asked me to respond to your letters of June 1, 9, and July 16, 1982, regarding P & B Services, Inc., and its interest in the maintenance service contract at Fort Lewis.

We still concur with the action of Region X in assigning that requirement at Fort Lewis to 8(a) firms other than P & B Services, Inc. We believe recent decisions of the Courts and the Comptroller General support such action on the basis that P & B Services, Inc. is "other than small."

It is noted that P & B Services, Inc. has received at least $39,253,213.00 in contracts since entry into the 8(a) program, indicating considerable program support. That help may now be supplied to firms which have not received such generous benefits.

We have taken into account your response to our July 6, 1982, letter informing you of our position. While we appreciate the points you have made, we do not agree that our decision in this matter should be altered.

Sincerely,

Robert L. Wright, Jr.
Associate Administrator
for Minority Small Business

RECEIVED
AUG 3 1982

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Mr. Harold J. X. Botley
President
P & B Services, Inc.
1931 South Fawcett Street
Tacoma, Washington 98402

RECEIVED APR 1 1 1983

Dear Mr. Botley:

We are in receipt of your request for an extension of your firm's Fixed Program Participation Term (FPPT). We regret that due to administrative delays, we are unable to process all such requests prior to the expiration of the firms' original FPPTs.

In order to avoid a lapse in your firm's FPPT which would cause your firm to cease to be an 8(a) Program participant, the Small Business Administration is granting your firm an extension of its FPPT in the following manner: The extension granted will be equal to at least the period of time between the expiration of your original FPPT, and the date on which SBA completes the processing of your extension request. When SBA has taken final action on your request, your firm will receive, by certified mail, final notice of the length of the FPPT extension granted. Please be advised that this extension may be as short as SBA's completed processing date, if a longer extension is not determined by SBA to be warranted. In accordance with the Code of Federal Regulations, 13 C.F.R. 124.1-1(f)(i), your firm may receive only one extension of its FPPT.

By copy of this letter, we are notifying the Regional Administrator of our action. Our notice will ensure that your firm will remain eligible to receive contract awards at least until the date of final processing by SBA of your firm's FPPT extension request.

Sincerely,

H Robert Salcedo

for Robert L. Wright, Jr.
Associate Administrator
for Minority Small Business

Mr. MOTT. I would like to finish my statement, if you will.

Mr. MITCHELL. Certainly.

Mr. MOTT. I would also like to address a little bit about what you said about the firms in your area and the amount of dollars that they did not receive in procurement activity as it relates to the 8(a) program; and I suggest that you also examine the SBA office in your region in terms of how they handled the process and the procurements in that area.

I suggest to you that they also weren't capable of marketing well for those firms in your area, which is one of the reasons why they have not participated as well.

You heard him say "self-marketing." That is what we learned we had to do, and we do that. We spent dollars and time. It cost us people; it cost us time in terms of fighting the majority community or trying to get this in this——

Mr. DAUB. I get your point.

Mr. MOTT [continuing]. In the door.

Mr. DAUB. My time is just about out.

Mr. MOTT. OK.

Mr. DAUB. And I hear what you are saying——

Mr. MOTT. My point is only that, when I hear you take a focus on the firms in the 8(a) program that have accomplished some success to date.

Mr. DAUB. Yes.

Mr. MOTT. That we are under attack, because everybody else wants a bite of the apple.

Well, there is another issue that I would like to state here. The purpose of Public Law 95-507 was to develop financially viable, competitively viable companies.

Mr. DAUB. Yes.

Mr. MOTT. Not passing through for a bite of the apple.

If I am going to die tomorrow, what do I want with that bite of the apple?

Mr. DAUB. Right.

Mr. MOTT. OK, the name of the game was for us to develop firms, and employ people, and pay taxes so that we would have a positive impact on this economy.

Mr. DAUB. I just wanted to get your view on whether or not there was a labeling process that occurred when you became a participant in the disadvantaged small business program known as 8(a).

I take it you feel that there is a labeling problem.

Mr. MOTT. There is a labeling problem, but the real issue is because we are minority not because of the label.

Mr. DAUB. I understand. I understand that.

Mr. MOTT. OK.

Mr. DAUB. The two of you together; you wouldn't even be in the program.

Mr. MOTT. It is a fact of life; I can't connect into the good old network——

Mr. DAUB. How much business have you got on yours, Mr. Adams, right now on the books?

Mr. ADAMS. 8(a)?

Mr. DAUB. Yes.

Mr. ADAMS. Oh, I don't recall.

Mr. DAUB. Percentages right now, today? Approximately?

Mr. ADAMS. I would say, maybe 60.

Mr. DAUB. 60 percent.

How much will carry over until next year and the year after?

Mr. ADAMS. Most of the next year, most of it.

Mr. DAUB. Most of it to 1984?

Mr. ADAMS. Yes, to 1984.

Mr. DAUB. And into 1985?

Mr. ADAMS. It will vary; it will probably go down. Actually, my whole marketing strategy is work other than 8(a); so I would hope that if I am successful, I will be able to find work to take the place of it.

Mr. DAUB. How many guys have you talked to other than the 21?

Mr. ADAMS. Yes. We met——

Mr. DAUB. Would you think that answers you all three have given for the record are fairly accurate, that there is probably within the terminated firms at this time, 60 to 80 percent as a range of current business with some carryover, at least—if we can get a figure for the next 2 years?

Mr. ADAMS. Can I finish?

Mr. DAUB. Yes.

Mr. ADAMS. Answering your question?

Mr. DAUB. Yes.

Mr. ADAMS. I assume that Mac Baldrige is going to be successful, all right, and that he is going to come up with a program that will help those firms that can survive while he is doing those things that SBA didn't do, in the way of creating a transition program.

However, I, too, would like to comment on some of your statements. About the companies in Omaha—because when I was head of the National Association of Black Manufacturers, I visited your town.

Mr. DAUB. You have a good council there.

Mr. ADAMS. And I worked with some of the companies in Omaha, and lectured them and met with them on the ways to get Government business, some of them took advantage and some of them didn't.

However, when you say that your companies—the smaller companies, and I may have heard you wrong—are suffering because they couldn't come to Washington, and they couldn't get as big or as powerful, or be as successful as we were; I'm saying that that is the normal mix.

If you compare the 8(a) program mix in contract and size, with the DOD mix, you will find that it is about the same.

Mr. DAUB. I think so, yes.

Mr. ADAMS. Yes. About the top 100 DOD contractors get the same contracts.

Mr. DAUB. That is correct.

Mr. ADAMS. And that also goes to the top 100 R&D contractors. All I say is having been an ex-GI—thank God for that, because it means that we are putting good equipment in the hands of our troops.

Mr. DAUB. OK, let me go——

Mr. ADAMS. Let me go one——

Mr. DAUB. You are speaking for the other firms. I need to know if you think their 8(a) business this year and the carryover for the next year or two is in that range of the three of you?

Mr. ADAMS. Let me tell you our fear, Congressman, because we are getting away from the point.

We are 19 companies, or 20, whatever we are, now, that Mac Baldrige is probably going to help because SBA said that "other than large in certain categories."

In certain categories, we are still small business.

Mr. DAUB. Yes.

Mr. ADAMS. My concern is for those 200, or 300, or 400 companies that are not in that category and have no place to go. All right?

They don't have a commerce—they would say, if you guys are big business, you come over to Commerce.

But what is going to happen to the 300 or 400 companies that are being kicked off the program without anything for them to grab on to?

Now, you mentioned net worth. You covered much to Jerry's embarrassment, the net worth of his company—now, balance sheets are deceiving, as you know, you being a businessman.

You say, net worth of a company—what does it mean? It means that the bank has told you, if you don't improve your debt to equity ratios, or your net worth, we won't advance you the credit that you are required to have.

You look at my net worth, and you say, "My God, Ted, you are worth a lot of money."

All right? But a person—only a person who does not have a business background would say that because anybody with a business background such as yourself would know that every dollar we have in net worth is pledged to our businesses in order to maintain a ratio so that the banking community will advance us capital.

Mr. DAUB. Mr. Adams, look, I hear you, and my time is just——

Mr. MITCHELL. Just a moment, we have extended the time a great deal. There is another panel——

Mr. DAUB. Sure.

Mr. MITCHELL [continuing]. And there are other members who wish to speak.

Mr. DAUB. Sure. I wanted just to say that I appreciated your comment.

The assigned function of Government business for subchapter S alone means you could take a $10 a week salary, and then take out at the end of the year the profits from the company and it wouldn't show; would it?

Mr. ADAMS. That is right.

Mr. DAUB. So, I mean, I understand those functions. What I am getting at is, that—and I didn't want to talk about the 300 or 400; they are in the next panels—we are getting there, and I know your concerns are genuine there, but I want to be sure that you all know some of us feel that in the termination for the larger firms or those who have been in longer, we are going to be sure that there is another program or usefulness for your potential; but it shouldn't be couched in terms of how negative it may have been for you to have been terminated at this point.

It is very important that you understand that, so that we can get a very viable opportunity for graduations in the future, for that next 400 firms that is going to come along.

That is very critical.

Thank you, Mr. Chairman, for your time.

Mr. MITCHELL. Thank you.

I think the panel, and the members of the committee ought to know that on April 11 GAO issued a statement in a case saying that if a firm——

Mr. Daub, I think you ought to hear this because it goes against your argument.

GAO has issued this opinion and ruling, on April 11 that if a firm was graduated because it is too large, or because it has completed its fixed participation term, it is not entitled to any modifications, nor additional contracts.

Now, that means that we have got to battle with GAO, because the direction in which you were going was that these firms have contracts extended out to 1984 or 1985 or maybe 1986.

Mr. DAUB. They already have the contracts, right?

Mr. MITCHELL. No; they have options.

We will have to take a look see at the GAO decision.

Mr. DAUB. OK.

Mr. MITCHELL. But it certainly has an adverse potential for these 3 firms, and for the 450 that will be graduated in the next 12 months because of fixed participation terms.

Mr. ADAMS. I haven't seen that, Mr. Chairman.

Mr. DAVIS. I haven't seen it either.

Mr. MITCHELL. I haven't see it yet; it is out. One of the SBA officials who is here advises us that it is. We will get copies of it.

Obviously, that vitiates or has the potential for vitiating anything that Secretary Baldrige and you may try to do for these firms.

Mr. DAUB. All I want you to know, Mr. Chairman, is that I do not believe that order would affect current business on the books. I am sure about that, and I would like to see the order myself.

Mr. MITCHELL. We need to do——

Mr. DAUB. I don't see how constitutionally it could affect business on the books.

Mr. MITCHELL. We need to do that, but already this has happened in the case of some 21 firms.

Mr. ADAMS. That is right.

Mr. MITCHELL. Orders on the books have been stopped simply because of graduation.

Let's you and I take a look at that one.

Mr. Addabbo.

Mr. ADDABBO. Thank you, Mr. Chairman.

I don't want to keep this panel much longer. I know you have other witnesses; and I have to leave for defense where they don't believe in minority enterprise.

Mr. Adams, we have worked together for many years, I know the frustration that you feel—and many of us share it—when we see cutbacks and changes which are unnecessary, and when you have an orderly flow of work which is then suddenly and completely disrupted.

You mentioned "competitiveness" quite extensively in your testimony when the chairman was asking questions.

Is there any way that the SBA can—before they graduate out an 8(a) firm—determine whether a firm is competitive or can compete in the business world? Is there some sort of measurement? Or is that all subjective?

Mr. ADAMS. No, sir. There are measurements.

Actually, when we testified concerning the graduation procedures, we used our study that was done by Mr. Casey, the current head of the CIA, as a model, as to how long and what it would take before a company became viable, competitive, all of those criteria?

And that model that the Casey study used was further reaffirmed in a publication by the Wharton School of Business.

Georgia Institute of Technology, however, came up with another study that didn't wholly agree with it, but there were many, many factors that were considered into how you judge a company viable.

One of the things—a lot of the things that were included in that study were those things that are included in the current legislation right now. There are certain measurements that you can make. If you get an analysis of Unified Industries, probably one of the most successful companies in the business, from an accountant, from an accounting firm, you will find his analysis would differ from that that was prepared by a banking firm, for example, because all of them have different numbers and different ratios that they use to evaluate you.

Now, insofar as being competitive, I have never said that we were not competitive. All right, and, in fact, when somebody says, you get contracts, noncompetitive contracts, I could feel my hair rise. I use that term because you cannot see me turn red. All right, but really, I am madder than hell when you say "You are not competitive." That is a bunch of crap, and the 8(a) program itself is a very competitive program, and if you don't believe it is, talk to some of the contracting officers.

Talk to some of the firms in Omaha that tried to bid on contracts that didn't win them because they were too high.

So, Congressman Addabbo, this term "competitive" is a very, very difficult term; and your question is probably one of the most difficult questions that can be asked.

Mr. ADDABBO. Well, the point that I am trying to make is that you just don't graduate a firm out of 8(a) because it has been in there *x* number of years——

Mr. ADAMS. No, sir, we don't.

Mr. ADDABBO [continuing]. Or because it has made *x* number of dollars.

Mr. ADAMS. You don't.

Mr. ADDABBO. You have to see whether you have—and I think Mr. Davis pointed it out—MBDA or MBDA's helping you to become competitive.

Mr. ADAMS. That is correct.

Mr. ADDABBO [continuing]. And SBA, has forgotten why it was established by Congress and we have to remind the SBA that they were given life as the advocate of small business, not as the adversary of small business which is the role they have taken on in the last several years. As the advocate of small business, they should

work with you and with those other firms that they were graduating, before they graduated, and that is where they failed. That is one reason why this legislation is necessary, that SBA be made to follow the criteria—as you have pointed out, Mr. Adams—follow those criteria before graduation, because if they do then you have a viable firm that graduates rather than merely what they have been doing over the years—playing a numbers game.

And it has been played by the Democrats, as well as by the Republicans. How many firms have we helped? How many firms do we have in 8(a)?

How many firms have we graduated?

All those numbers are ridiculous because those numbers mean more and more hurt than help, because those numbers mean you are a statistic, but you are not being helped to move ahead; and I believe that is why this legislation is necessary.

We have tried it, as you know, Mr. Adams, we have tried to do it through hearings, through letters, through our reports, to tell them that this is the road to follow, but they are, intent as every other administration—this administration as well as the Democrats—to play a numbers game.

We have graduated x numbers; we are bringing x numbers into 8(a). That is wrong. How are they doing? How successful are they? Have they become a part—can they become a part of the mainstream? These are the important questions.

And legislation is the worse way to do it. We know that when we passed Public Law 95-507, but for many years, we had hearings to try and get Government to go out and seek and help and set aside portions of contracts. They didn't do it; we did it by legislation.

Hopefully, before this legislation passes, the message that you have given, Mr. Adams, about competitive viability will get out so that this legislation is not necessary. If they do not change their ways and we find more and more business people being hurt and more empty chairs of people who have gone bankrupt because they have not been given the proper help to move into the mainstream, we will stop that. If they don't stop it administratively we will have to do it through the Congress.

Mr. ADAMS. Mr. Addabbo, can I make one statement because it is something that always bothers me. I would hope that the Congress—every time administration officials come forward, that you would ask two questions and that is both by Republicans and Democrats, and I say two questions because I think that whenever we get away from these two questions we really get off into another land.

Those two questions are: What are you doing to insure that small businesses get a fair and equitable share of Government business? I think the next question is: What are you doing to insure that minorities get a fair and equitable share of Government business?

Answering those questions will get them away from the numbers game because that is the reason this committee is here. If it wasn't for those two questions there would be no need for a small business committee. So any hearing, if Mr. Saunders comes up or the President himself, I think those questions should always open up any testimony that you take. What are you doing to insure that small

businesses and minority businesses get a fair share of Government business?

Mr. ADDABBO. Mr. Adams, those questions have always been asked by myself and the members of this committee.

Mr. ADAMS. I know that.

Mr. ADDABBO. And we always get the same answer. Either they come back with dollars and they show they have doubled from one to two so you have a 100-percent increase or they got a new person aboard who is going to go diligently out there and seek new contracts. I think, as Mr. Mott says, you have to be your own sales manager. You have to go looking for the contracts because they sit back behind their desk and take contracts from one small firm and merely give it to another rather than increase the total going to small business.

Mr. ADAMS. I think the White House Conference gave you some goals and measurable objectives that you can use.

Mr. ADDABBO. The goals weren't for us. The goals were supposed to be for the White House. Then we have to do it legislatively if they don't do it administratively.

Mr. DAUB. Mr. Chairman?

Mr. MITCHELL. Yes.

Mr. DAUB. Two of our distinguished panelists I believe did not have prepared testimony. I might ask that they have 5 days, that the record be opened if they do care to submit any formal remarks.

Mr. MITCHELL. Which two did not have statements?

Mr. DAUB. All three. All right, we have one.

Mr. ADAMS. Thank you.

Mr. MITCHELL. There is a vote on which I am not going to fool with. That is to approve the Journal. I have not read the Journal from yesterday; therefore, I can't approve it. Some of the members will have to go.

But let me just say before those members go I think it is a serious mistake for the Congress to have to legislate to make an agency work. I honestly believe that, and yet that role is forced on us.

The agencies by their nonperformance force us in the Congress to almost run the agencies. I think it has a dangerous implication for separation of powers. But nevertheless, the history of SBA and the more recent of SBA mandates, it seems to me, that we pass this legislation unless they shape up. I am going to proceed.

Thank you very much, gentlemen. It was excellent testimony. Thank you. I am going to proceed with our next two witnesses and we will now hear from them.

Mr. Conrad Arguijo, president of Roselm Electronics, Inc., and Mr. Alvin Joe, president of Geo/Resource Consultants.

Mr. Burton from the Avandi II Productions was to have been here. He was unable to make the trip. He did submit a statement and I will ask unanimous consent that that statement be submitted for the record at this time.

[Mr. Burton's prepared statement follows:]

PREPARED STATEMENT OF CAL E. BURTON, CHAIRMAN, AVANDI II PRODUCTIONS, INC.

MY NAME IS CAL BURTON. AS CHIEF EXECUTIVE OFFICER OF AVANDI II PRODUCTIONS, IT IS A PLEASURE TO APPEAR THIS MORNING AND TO LEND SUPPORT TO YOUR EFFORTS TO ENACT H. R. 863 AS AN AMMENDMENT TO THE SMALL BUSINESS ACT.

AVANDI IS ONE OF THREE PRODUCTION FIRMS IN THE 8 (A) PORTFOLIO. WE WERE ADMITTED TO THE PROGRAM ON NOVEMBER 5, 1981. SBA HAS PROVIDED LIMITED FUNDING ASSISTANCE IN THE FORM OF BOTH DIRECT AND LOAN GUARANTEE MONIES. WE HAVE RECEIVED TIMELY REVIEWS OF OUR PROGRESS AND AGENCY ADVICE ON EFFORTS NECESSARY TO BECOME COMPETITIVE IN A HIGHLY COMPETITIVE ARENA. HOWEVER, AVANDI'S SITUATION IS PROBABLY A TEXTBOOK CASE FOR THE PROPOSITION THAT THE AGENCY'S EFFORTS AND POLICY DIRECTION MUST BE RE-EXAMINED IF THE PROGRAM'S STATED GOALS ARE TO BE REALIZED.

AVANDI HAS DULY COMPLIED WITH PROGRAM REQUIREMENTS FOR ESTABLISHING OF A FIXED PARTICIPATION TERM AND THE AGENCY HAS ALLOWED A PERIOD OF FIVE (5) YEARS FROM THE DATE OF OUR FIRST 8 (A) CONTRACT FOR AVANDI TO BECOME COMPETITIVE. IN THEORY THE PERIOD MAY NEVER START TO RUN.

DURING THE PERIOD OF AVANDI'S PROGRAM PARTICIPATION, WE HAVE CONTACTED EVERY MAJOR GOVERNMENTAL USER OF AUDIO VISUAL PRODUCT AND RESPONDED TO 145 REQUESTS FOR PROPOSAL. WE HAVE BEEN REJECTED BY MORE THAN 30 AGENCIES. THE TOTAL DOLLAR VOLUME REPRESENTED IN RESPONSE TO THESE REQUESTS FOR PROPOSAL IS IN EXCESS OF $14 MILLION. TO THIS DATE, IN ALL OUR EFFORTS, WE HAVE BEEN AWARDED ONLY TWO CONTRACTS, AMOUNTING TO $14,500 FROM THE U. S. DEPARTMENT OF AGRICULTURE AND THE ARMED FORCES RADIO AND TELEVISION SERVICE, (SEE EXHIBIT "A"), WHICH WERE OBTAINED THROUGH A COMPETITIVE BID.

IT APPEARS THAT THE RESISTANCE FROM WITHIN GOVERNMENT IS NOT ONLY GREATER THAN PRIVATE SECTOR BIAS, BUT ALSO THAT SBA'S INSISTANCE UPON LIMITED PROGRAM PARTICIPATION MAY IN FACT INCREASE THE MINORITY ENTRANTS OPPORTUNITY FOR FAILURE, AS PROJECTED GROWTH PERIODS PROVE UNREALISTIC IN THE FACE OF INADEQUATE GOVERNMENTAL SUPPORT.

THE 8 (A) PROGRAM HAS THE PRIMARY PURPOSE OF INCREASING THE PARTICIPATION OF MINORITY ENTREPRENEURS IN THE GOVERNMENT CONTRACTING PROCESS. AVANDI'S THIRD AND ONLY SIGNIFICANT PARTICIPATION IN GOVERNMENT CONTRACTING WILL BEGIN THIS SUMMER, WHEN WE WILL SERVE AS THE "PRIME SUBCONTRACTOR FOR AUDIO VISUAL PRODUCTION," UNDER CONTRACT WITH A MAJOR DEFENSE CONTRACTOR. THIS OPPORTUNITY CAME AS THE RESULT OF AVANDI'S AGGRESSIVE PRIVATE SECTOR MARKETING EFFORT TO AN AUDIENCE WHICH THE SBA HAD BEEN CONSISTENTLY UNABLE TO PENETRATE.

IT IS INCONCIEVABLE THAT AVANDI COULD MEET THE STANDARDS SET BY A MAJOR DEFENSE CONTRACTOR FOR INCLUSION IN A COMPETITIVE BID AND AT THE SAME TIME LACK THE REQUISITE SKILLS TO PARTICIPATE IN SIMILAR OPPORTUNITIES WHICH WERE OR SHOULD HAVE BEEN AVAILABLE FOR SET-ASIDE UNDER THE 8 (A) PROGRAM.

DURING THE PERIOD TWO PRESIDENT'S HAVE ORDERED THIS NATIONS PUBLIC AGENCY TO INSURE THAT A LARGER PERCENTAGE OF THE GOVERNMENT'S PURCHASES OF GOODS AND SERVICES BE AWARDED TO MINORITY FIRMS. IN OUR INDUSTRY THAT MANDATE HAS BEEN IGNORED WITH IMPUNITY. THERE APPEARS TO BE VIRTUALLY NO ANALYTICAL EFFORT DEVOTED TO THE RELATIONSHIPS BETWEEN THIS ABSENCE OF COMPLIANCE AND THE FAILURE OF MANY FIRMS INCLUDING AVANDI TO MEET ITS FIXED PARTICIPATION TERM GOALS OR OTHER REQUESTED TARGETS. THE CRITERIA CONTAINED IN H. R. 863 SHOULD PROVIDE THE REQUIRED INCENTIVE TO THE SMALL BUSINESS ADMINISTRATION TO COUPLE DEADLINES WITH COMPLIANCE ASSISTANCE.

AN EXCLUSIVE LICENSE TO MANUFACTURER CALENDARS AND DATED MATERIALS FOR THE 1984 OLYMPIC GAMES IS THE MOST SIGNIFICANT BUSINESS ACCPMPLISHMENT THAT AVANDI HAS ACHIEVED TO DATE. THE AWARD OF THAT LICENSE WAS BASED SOLELY ON MY EFFORTS AND PERSONAL CAPITAL CONTRIBUTIONS. WITHOUT THE OLYMPIC LICENSE OPPORTUNITY, OUR OUTLOOK WOULD BE VERY BLEAK AND POSSIBLY TERMINAL. OF COURSE, THE OLYMPIC COMMITTEES RECORD ON AFFIRMATIVE ACTION IS SIGNIFICANTLY BETTER THAN THAT OF THOSE WHO CONTROL GOVERNMENT CONTRACTING, FORTY-THREE (43) PERCENT OF THE SELECTED LICENSEES ARE MINORITY CONCERNS. THE OLYMPIC COMMITTEE AFFIRMATIVE ACTION REPORT OF JANUARY, 1983 IS SUBMITTED FOR THE RECORD. (SEE EXHIBIT "B").

IT IS CLEAR THAT IF SBA'S SISTER AGENCIES FELT ANY COMPULSION TO COMPLY WITH THE AFOREMENTIONED PRESIDENTIAL ORDER, BOTH THE GOVERNMENT'S MONEY AND OUR OWN EFFORTS WOULD HAVE BEEN FAR MORE PRODUCTIVE. THE PROPOSED LEGISLATION WOULD CLEARLY GIVE SBA ACCOUNTABILITY FOR ASSUMING THAT THE VIGOR ASSOCIATED WITH ITS COMPLIANCE EFFORTS MATCHED THAT WHICH ALL PROGRAM PARTICIPANTS EXPERIENCED IN THE ESTABLISHMENT OF THE INITIAL FIXED PARTICIPATION TERMS.

TO INSURE THAT THIS COMPLIANCE EFFORT IS MADE, WE BELIEVE THAT THE LEGISLATIVE HISTORY OF H. R. 863 SHOULD CLEARLY REFLECT THAT IT IS THE INTENT OF THE CONGRESS THAT THE NATURE AND EXTENT OF SBA ASSISTANCE AND SUPPORT, INCLUDING ITS EFFORT TO INSURE COMPLIANCE WITH THE AFOREMENTIONED PRESIDENTIAL ORDER, BE A SIGNIFICANT FACTOR IN ANY DETERMINATION BY HEARING OR OTHERWISE WITH REGARD TO WHETHER A PROGRAM PARTICIPANT HAS MADE ADEQUATE PROGRESS TOWARD ACHIEVING ITS CRITERIA OF COMPETITIVENESS.

STATUS OF CONTRACT ACTIVITY

(SUMMARY AS OF 4/15/83)

- NUMBER OF CONTRACTING OFFICERS AND AGENCY CONTACTS: 30
- NUMBER OF RFP'S RESPONDED TO DATE: 145
- NUMBER OF RFP'S REJECTED TO DATE: 142
- TOTAL DOLLAR AMOUNT REPRESENTED IN RESPONSES TO RFP'S IN EXCESS OF: $14,211,896.48
- NUMBER OF OUTSTANDING RFP'S WITH GOVERNMENT AGENCIES TO DATE: 2
- TOTAL DOLLAR AMOUNT OF CURRENT RFP'S WITH GOVERNMENT AGENCIES: $208,000
- TOTAL RFP'S AWARDED BY GOVERNMENT AGENCIES TO DATE: 3
- TOTAL DOLLAR CONTRACT AMOUNT AWARDED ON COMPETITIVE BID TO DATE: $14,500.00
- TOTAL 8 (A) CONTRACTS CONSIDERED FOR TO DATE: 2
- TOTAL 8 (A) CONTRACTS AWARDED TO DATE: 0
- TOTAL DOLLAR AMOUNT REPRESENTED BY 8 (A) CONTRACTS LOST: $350,000 TO $450,000

EXHIBIT A

Los Angeles Olympic Organizing Committee

Affirmative Action Report

January 1983

From its inception, the Los Angeles Olympic Organizing Committee has been dedicated to the policy that employment and business opportunities should be available to all qualified persons regardless of race, age, color, sex, religious beliefs, national origin or physical handicap.

This report covers our affirmative action, as of January 31, 1983, in the areas of:

- Employment
- Business Opportunities
- Minority Vendors

Throughout its three-year history, the LAOOC Affirmative Action policy has ensured that ethnic minorities and women become permanent members of the LAOOC staff and participate fully in the business and administration of the 1984 Games.

The initial equal opportunity effort was the adoption of an Affirmative Action Resolution by the LAOOC Board of Directors in 1979. This resolution was followed by the formation of a staff that has remained at least 25% minority and 56% women. Ethnic minorities and women have been appointed to top positions on the Executive Committee, the Board of Directors, and the Citizens Advisory Commissions.

The LAOOC intends to continue its equal opportunity policy through all phases of Olympic planning, until the conclusion of The Games in 1984.

EMPLOYMENT AS OF JANUARY 31, 1983

The Committee has three categories of employees: officials and managers, professionals, and office and clerical.

Officials and Managers

Officials and managers represent 26% of the total staff of the LAOOC. This category consists of vice-presidents and assistant vice-presidents, who function as department managers or direct special phases of the Committee's operation. Six employees or 13% of this category are members of ethnic minority groups. Eleven employees or 23% are women.

Professionals

Professionals represent 38% of the LAOOC staff. This category includes the Accounting Manager, Office Manager, Personnel Administrators, Planning Manager, Olympic Family Services Administrators and Sports Administrators. Fifteen employees or 21% of this category are ethnic minorities and 29 employees or 41% are women.

Office and Clerical

Office and clerical workers represent 36% of the total positions at the Committee. They include receptionists, telephone operators, office clerks, secretaries and clerk typists. Twenty-two of the employees in this category are minorities.

The current total staffing composition is 25% ethnic minorities and 56% women. As the staff increases, a continuing effort will be made to include ethnic minorities and females in all three job categories.

Volunteers

Volunteers served as hosts for the January 1983 meeting of the International Olympic Committee Executive Board and the National Olympic Committees. There were 192 volunteers of which 23% were minorities. It is significant to point out that 49 or 27% of the volunteers were men. A concentrated effort was made to include men in positions that are typically held by females.

BUSINESS OPPORTUNITIES

It is the policy of the LAOOC to direct business on a regular basis to ethnic minorities and women.

Minority Banks

Since 1980 over $2 million have been deposited in minority banks. These investments are intended to stimulate economic growth in minority communities. The Committee has invested with the following minority banks:

Banco Popular
Bank of Finance
California First Bank
Camino Real Savings and Loan
Cathay Bank
Family Savings and Loan
First Womens Bank of Santa Monica
Founders Savings and Loan
Los Angeles National Bank
Omni Bank
San Marino Savings & Loan

Billings

Billings for the period January through December, 1982 to ethnic minority and women-owned businesses totalled nearly $323,000.

The billings are:	Travel Agencies	$ 61,023.00
	Office Supplies & Printing	$144,933.00
	Insurance	$ 20,143.00
	Miscellaneous Services	$ 96,493.00

Miscellaneous services include couriers, art work, florists, movers, audio-visual products, marketing, and photography.

One hundred percent of all billings for international travel and 97% of all billings for office supplies and printing went to minority firms.

Licensees

Minority licensees which manufacture or market products with Olympic identification include:

ACM International
Action Headwear (sub-licensee)
Avandi II Productions
Cervantes Neckwear
L.A. Button Company
Moochies Sporting Goods
Ken Norton Company
Ooh La La
Panama Glove Company

Forty-three percent of all Olympic licenses granted have been to minority businesses.

CONSTRUCTION

The LAOOC is coordinating with the Mayor's Office of Small Business Assistance in identifing minority contractors and subcontractors.

In reviewing Olympic sites for the Games, it was determined that a velodrome for cycling and a swim stadium needed to be constructed. All other sites already existed, some needing minor improvements.

Southland (7-Eleven) Corporation paid for and oversaw the construction of the velodrome, which was completed in July, 1982. The following minority subcontractors participated in the construction:

Borbon Painting
F.K. Pullen
Pangborn
U.S. Flag and Pole

23-329 O - 83 - 12

The total amount of these jobs was $234,128.

McDonald's Corporation is paying for the construction of the new swim stadium. The involvement of minority contractors is required as a part of the University of Southern California's Affirmative Action Program.

The building of the LAOOC office at UCLA on City property required UCLA compliance with the Affirmative Action policies established by the State of California.

Since June of 1982, five contracts have been awarded. We have employed the following minority contractors:

Pacifica – Coliseum – locker room improvement;

A-1 State Fencing – West Los Angeles College – hammer throw cages and shot put rings;

AEC – (a minority sub-contractor) – Birmingham High School – track.

MINORITY VENDORS

Advertising/Marketing

Finder Image International Inc.
1945 S. La Cienega Boulevard
Los Angeles, California 90067
(213) 837-0197

The Pacific Marketing Group
900 North Citrus Avenue
Los Angeles, California 90038
(213) 466-4288

U.S. Incorporated
14147 South Hawthorne Boulevard
Hawthorne, California 90250
(213) 973-0154

Athletic Equipment

Deportes Duran
750 South Atlantic Boulevard
Los Angeles, California 90022
(213) 265-1215

Kenny's Sporting Goods
2423 Brooklyn Avenue
Los Angeles, California 90033
(213) 267-0885

Caterers

Rudy's Pasta House
6047 East Olympic Boulevard
Los Angeles, California 90034
(213) 723-0266

Tarakarren
725 East Hyde Park Boulevard
Inglewood, California 90302
(213) 674-4133

Florists

Flower View Gardens
1801 North Western Avenue
Los Angeles, California 90027
(213) 466-7373

Flowers For You "By Anita"
5824 York Boulevard
Los Angeles, California 90042
(213) 256-8401

Graphic Design and Printing

Augustus Art
8584 Venice Boulevard
Los Angeles, California 90034
(213) 870-8009

Copy Runner Printing
15605 Carmenita #102
Santa Fe Springs, California 90670
(213) 802-1511

Crown Gibraltar
615 South Raymond Avenue
Alhambra, California 91803
(213) 283-6112

Fisher Graphics
607 North La Brea
Los Angeles, California 90036
(213) 938-0179

Sir Speedy
9142 Sepulveda Boulevard
Los Angeles, California 90045
(213) 649-5501

Toyo Printing Company, Inc.
309 South San Pedro Street
Los Angeles, California 90013
(213) 626-8153

The Renaissance Design Group, Inc.
2659 La Cienega Boulevard
Los Angeles, California 90034
(213) 839-4996

Janitorial Services

Executive Suites Services, Inc.
19025 Parthenia
Northridge, California 91324
(213) 993-6300

Labels

Data Pacific
3750 West Sixth Street
Los Angeles, California 90020
(213) 381-1127

Tape and Label Converters
3221 East Pico Boulevard
Los Angeles, California 90023
(213) 268-4125

Lettering

Custom Signs
202 Fashion Lane
Suite 205
Tustin, California 92680
(714) 838-5035

Moving Services

Ron Harding Moving Services
1341 N. Kraemer
Anaheim, California 92806
(714) 630-8200

Office Supplies and Equipment

J.S.A. Sales
9207 East Slauson Avenue
Pico Rivera, California 90660
(213) 723-1428

Universal Office Equipment
219 South San Pedro
Los Angeles, California 90012
(213) 625-2222

Photography

Lester Sloan Productions
672 La Fayette Park Place
Suite 41
Los Angeles, California 90057
(213) 388-6919

Linda Wolf
901 Euclid, #2
Santa Monica, California 90403
(213) 395-0126

Mr. MITCHELL. Am I pronouncing your name correctly, sir?

Mr. ARGUIJO. Arguijo.

Mr. MITCHELL. Will you lead off for us, please.

Mr. ARGUIJO. Thank you.

Mr. DAUB. Mr. Chairman, I have scanned their testimony, will run over and vote, and I will be right back.

Mr. MITCHELL. Good. Yes, sir.

PANEL CONSISTING OF CONRAD ARGUIJO; AND ALVIN K. JOE, JR.

TESTIMONY OF CONRAD ARGUIJO, PRESIDENT, ROSELM INDUSTRIES, INC., SOUTH EL MONTE, CALIF.

Mr. ARGUIJO. Congressman Mitchell and distinguished members of the House Committee on Small Business, thank you for this opportunity to present to you some of my experiences in the 8(a) program and some of my thinking on the graduation issue.

My name is Conrad Arguijo and I have been in business for 18 years. I am president of Roselm Industries, an electronics firm located in South El Monte, Calif.

Roselm has the electronic fabrication and assembly facilities to build instrumentation and control consoles, display and instrument panels, printed circuit assemblies, RF subassemblies, electrical, and electronic test sets.

We currently do work for the Navy and numerous prime contractors including Jet Propulsion Laboratory, Teledyne Industries, Rockwell International, Litton Industries, Hughes Aircraft, et cetera.

I brought along a sample of the type of cables we build for the Navy which is that on display over there.

Mr. MITCHELL. Which one is that?

Mr. ARGUIJO. Right on the board there with the cable assemblies mounted on it, sir.

Mr. MITCHELL. Oh, I see.

Mr. ARGUIJO. Yes, sir. My sales this year will probably hit $850,000, about one-half of which is 8(a). I presently have some 20 full time employees.

I was accepted into the 8(a) program 3 years ago after a 3½-year struggle to secure 8(a) certification.

At the time I became 8(a) certified, my sales were around $250,000, a level at which they had been for about the preceding 15 years. I had never secured a prime contract directly from a Government agency despite much effort on my part and despite the fact that I could manufacture many items which the Government bought directly.

Prior to 8(a) certification, my subcontracts averaged $5,000 to $10,000 each, and the largest subcontract my company had ever received in 15 years was around $100,000. For 15 years I was unable to break out of the rut of small subcontracts, $250,000 in sales and no prime contracts.

In the 3 years since I became 8(a) certified, I have received several prime contracts from Navy facilities for ground communications equipment, cables, and circuit board assemblies.

I have performed all of them to specifications, on time and at the price negotiated with the buying location. My direct Government

contracts have averaged $100,000, and the largest one was for around $400,000. In my 3 years in the 8(a) program, my sales have tripled to $750,000 in 1982, and my employees increased from 8 to almost 20. Interestingly enough, the larger 8(a) contracts I have performed have changed the way many prime contractors view my company.

Recently I received several contracts in the $100,000 range from Rockwell International, Litton Industries, the Jet Propulsion Laboratory, and Ford Aerospace. The 8(a) work has had a real impact on my ability to begin securing meaningful private sector work. Currently, my sales are about evenly divided between 8(a) and non-8(a) contracts.

While the 8(a) program has been essential to my progress over the past 3 years, it has not been easy. Many people are under the mistaken impression that 8(a) certification means that you can go down to the SBA and pick up your share of 8(a) contracts. Nothing could be further from the truth.

The truth is that 8(a) is simply license to secure contracts on a negotiated basis. You still have to find them. Then you have to convince the technical and contracting officials that you can perform the work before an 8(a) contract is even considered.

Then you have to develop a competent, technical proposal and negotiate acceptable terms and conditions. Essentially this means that you accept the contract on the terms dictated by the agency with respect to specifications, quantities, delivery, and price. And I have no quarrel with this. After all, I am a businessman and this is a business program. At no time would I ever suggest that the Government reduce quality, delivery, or price for the sake of the 8(a) program.

What I would like you to understand, however, is the enormous amount of time and energy required to market and develop one's company.

In my case I have spent the better part of 3 years just trying to identify those Government buying activities which procure what I produce. I marketed the Navy Ships Parts Control Center in Mechanicsburg for over 1½ years before securing a $16,000 contract for circuit assemblies.

I marketed Navy Ocean Systems in San Diego for over 1½ years before securing the $31,000 contract for cables. I marketed Naval Aviation Supply Center for 2½ years before securing a $41,000 contract for communication head sets.

I have marketed FAA for 1½ years for a power supply which I still have not received. I have marketed Navalex for over a year with no prospects in sight.

All of this simply means that it is not easy for a small company to identify requirements. It takes tremendous effort to reach out and market oneself across the country. It is expensive, time consuming, uncertain, tedious, frustrating, and in many instances, futile.

I can tell you from first-hand experience that 8(a) certification is no guarantee of contracts. I have received little contract support from SBA. In fact, I was told by my SBA business development specialist not to expect support from SBA because SBA does not have the staff or ability to do marketing for 8(a) firms.

It is especially difficult for a small company like mine because I am in charge of everything, and marketing is a full-time job in itself. My sales are not yet up to the point where I can afford a full-time, marketing professional.

My daughter and I both do marketing. At the same time, she is responsible for running a financial side of the business, and I run production and everything else.

I am enormously grateful for the 8(a) program. I know from 15 years of frustration where I would be without 8(a) certification. Yet, there is one major thing which would improve the program—a little more time.

In all sincerity, as I look at graduation 4 years from now, I do not feel I will reach my goal of competitive viability at $12 to $15 million in sales. There is just too much to accomplish in such a short period. I must build up my sales, my facilities, my equipment, my production personnel, my management, my fiscal controls, and my own management expertise. I can do it with a little more time but I feel that I will be graduated before I have fully built up my non-8(a) sales.

I fear graduation because it is sudden and total. If my 8(a) sales at graduation are a high percentage of my total sales, I will be very hard hit. I will have to layoff production personnel and some of my managers.

I will have excess production capacity and too much space. I will have long-term financial commitments for equipment and space which will be adversely affected. My credit relationship with my bank will be seriously affected.

I am in a highly technical area performing defense requirements to top military specifications. There are many others in the 8(a) program like me. I implore this committee to give good companies like mine, who are trying their absolute best, a little more time in the program.

We won't let you down. We don't want to stay in the program indefinitely so as to deprive other deserving companies of the opportunity of the 8(a) program.

Thank you for the 8(a) program and thank you again for your interest in my ideas and for the opportunity for me to be here today.

[Mr. Arguijo's prepared statement follows:]

PREPARED STATEMENT OF CONRAD ARGUIJO, PRESIDENT, ROSELM INDUSTRIES, INC., SOUTH EL MONTE, CALIF.

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- Printed Circuit Assemblies
- R.F. Subassemblies
- Electrical and Electronic Test Sets

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Mr. MITCHELL. Thank you very much, sir.
Mr. Joe, do you prefer being called "Mr. Joe"?
Mr. JOE. That is fine.

TESTIMONY OF ALVIN K. JOE, JR., PRESIDENT, GEO/RESOURCE CONSULTANTS, INC., SAN FRANCISCO, CALIF.

Mr. JOE. Mr. Chairman and members of the subcommittee, thank you for inviting me to present my views on H.R. 863, a bill to amend the provisions of the Small Business Act pertaining to the section 8(a) program.

I am an experienced engineering geologist with my own firm which was established in 1977 and is called Geo/Resource Consultants, Inc. It is located in the city of San Francisco, which is the headquarters office, with branch offices in Tucson, Ariz. and Seattle, Wash.

At present I am also the president of Asian American Architects & Engineers and a member of both the Council of Asian American Business Associations and the Minority Business Input Committee of the Bay Area Purchasing Council.

I would like to add I am also minority representative for the MX Advisory MBE Committee, which I haven't heard much about since last year.

Mr. MITCHELL. The MX missile?

Mr. JOE. Yes. It has an MBE Advisory Committee that is composed of eight representatives of various different——

Mr. MITCHELL. I didn't know about it. That is a curious development. Go ahead.

Mr. JOE. OK. Geo/Resource Consultants is a professional corporation involved in a variety of different public works and commercial and private development projects such as sewage treatment plants, hazardous waste projects, dams, tunnels, subways. We are involved in a lot of mass transit projects and also large residential subdivisions and specifically in urban development.

The company, Geo/Resource & Sons, currently employs a staff of about 20 professionals including geologists, engineers, seismologists, geophysicists plus the other clerical and technical support.

We received our certification as an 8(a) firm from the Small Business Administration in September 1980, approximately 2½ years ago. In those 2½ years, GRC, in spite of extensive national marketing, received only three contracts through the 8(a) program totaling approximately $220,000.

Recently we were notified that GRC would be graduated from the 8(a) program in April 1985, 2 years from this month.

I fully support the provisions of H.R. 863, particularly those which address the criteria for graduation of certified 8(a) firms.

The fixed program participation term employed at this time by the SBA is an affront to the intent of the Small Business Act, to Public Law 95-507 and to minority businesses which enter into the mainstream of the American economy. In GRC's original 1980 business plan we had projected $600,000 for 1981 in 8(a) support but received only $107,000 in actual 8(a) contracts, only 18 percent of our projected support. We received this 18 percent of our goal in 1981

in spite of our intense marketing campaign to Federal agencies' contracting officers throughout the Nation.

In 1982 GRC received only $49,000 in 8(a) contracts, representing only 6 percent of our original goal of $850,000 in contract support in the 8(a) program. Again in 1982 we actively sought 8(a) contracts but were unable to convince the Federal agencies to award us any significant 8(a) contracts.

To show you that these misgivings in 8(a) support for our firm were not signs of GRC's lack of ability or lack in marketing activity, our sales in the open and competitive market increased from $486,000 in 1980 to $656,000 in 1981, an increase of 39 percent and near to our planned goal of $700,000 for 1981 in non-8(a) support.

In 1982 our non-8(a) sales rose to $871,000, an increase of 33 percent over 1981, again close to the goal of about $1 million as projected in our original business plan to SBA.

Last year we were required by the SBA to rewrite our goals in our business plan in accordance with Public Law 96-481 regarding the fixed program participation term. For 1982 we had decided to lower our expectations for 8(a) support and had projected $450,000 but secured only one contract for $49,000.

At the same time, we exceeded our goal for non-8(a) contract support by $21,000. Our projected goal for 1983 8(a) support is $800,000. However, to date we have not received one 8(a) contract this year.

For reasons which are unclear to me, the Federal agencies located in the western region either have refused to participate with firms such as mine, which we are called architectural engineering firms, in the 8(a) program or have participated to a very, very small, almost insignificant extent.

GRC has continuously marketed to the agencies in the western region on a competitive basis in non-8(a) and have made a short list essentially but have not reached any contract closures.

Through that, we have marketed in the 8(a) end but have failed miserably to get any support. Department of Defense agencies spend large amounts of Federal dollars in the architectural and engineering profession in the State of California in the Western United States, but these agencies have refused to really make a commitment to utilize 8(a) consulting firms. I know, for example, that the Navy, western division, in San Bruno, promotes the 8(a) contracts in the brochure to consultants. Similarly, the Army Corps of Engineers and the Air Force in their brochure have these little paragraphs where they dislike awarding 8(a) contracts to consulting firms. Apparently there is a stigma that they put on consulting firms that are 8(a). I am not saying manufacturing or maintenance firms, but the consulting firms. This is hurting——

Mr. MITCHELL. Really it is architects and engineers.

Mr. JOE. Yes; and we are considered part of that group although I am a geologist and we do a lot of Earth science studies.

While one would think that the U.S. Geological Survey would be the first place for a geological firm to turn to, the USGS in fact would not award any 8(a) contracts to us even though we met with a number of contract officers in that agency.

I have met with numerous contracting officers in the San Francisco area, Denver, and here in Washington, D.C., and only a few have been helpful in our participation in the 8(a) program.

H.R. 863 I believe adequately addresses, at least for now, this problem with 8(a) contractors and a graduation of 8(a) contractors from the SBA program. I fully support the conceptual provisions for the criteria of competitiveness. The future measurement of these criteria remains vague to me. But there is no doubt in my mind that competitiveness is the key to assisting disadvantaged businesses entering into the mainstream of our society.

The proposed requirements of 85 percent of all the firm's criteria and 75 percent of the criteria in each of the financial management and marketing functions are excellent benchmarks for a firm to achieve.

In the specific case of GRC, we expect to meet our goals in the non-8(a) market according to the projections in our business plan.

However, without the necessary 8(a) support, we will not grow as a firm to become competitive with the current fixed program date. In our business plan we hope to reach $2,500,000 in sales in 1985.

However, this projection is based upon $2.1 million in 8(a) contract support over the next 2 years. That $2.1 million represents nearly 10 times the 8(a) contract support which we received over the last 3 years.

I would like also to take this opportunity to address current size standards employed by the SBA. My understanding is that the SBA is currently planning to lower the small business size standard to $3.5 million in annual sales from the current $7.5 million for architectural and engineering firms. This lowering of the size standard would allow small and disadvantaged minority businesses such as mine in the AE field, architectural engineering field, to successfully compete on small business set-asides. We fully support the proposal in H.R. 863 to exclude 8(a) contracts when computing the size of the business.

Mr. Chairman, in the architectural and engineering professions, it is my opinion that it generally requires about $3.5 million in annual sales to be truly competitive with similar mainstream businesses.

At that point, the firm will usually employ about 50 people. Although our business plan calls for only $2,500,000 annual sales, including 8(a) contracts for 1985, we have every intention to reach that competitive level of $3.5 in annual sales within the next five to 10 years.

If the 8(a) program will employ the proposed criteria of competitiveness for determining a graduation date, along with the deletion of the 8(a) contract support from applicable small business size standards and a greater commitment to 8(a) consulting firms, Geo/Resource Consultants will have every hope of becoming a competitive mainstream business.

Thank you for hearing me.

[Mr. Joe's prepared statement follows:]

PREPARED STATEMENT OF ALVIN K. JOE, JR., PRESIDENT, GEO/RESOURCE CONSULTANTS, INC., SAN FRANCISCO, CALIF.

Mr. Chairman and members of the Subcommittee, thank you for inviting me to present may views on H.R. 863, a bill to amend the provisions of the Small Business Act pertaining to the Section 8(a) program. I am an experienced engineering geologist with my own firm since 1977 called Geo/Resource Consultants, Inc. located in the City of San Francsco with branch offices in Tucson, Arizona and Seattle, Washington. At present, I am also the President of Asian American Architects and Engineers and a member of both the Council of Asian American Business Associations and the Minority Business Inpuc Committee of the Bay Area Purchasing Council.

Geo/Resource Consultants currently employs a staff of twenty (20) including geologists, engineers, seismologists, geophysicists and technical and clerical support. We received our certification as an 8(a) firm from the Small Business Administration in September of 1980, approximately 2 1/2 years ago. In those 2 1/2 years, GRC has, in spite of extensive national marketing, received only three (3) contracts through the 8(a) program, totalling $220,000. Recently we were notified that GRC would be graduated from the 8(a) program in April, 1985--two years from this month.

I fully support the provisions of H.R. 863, particularly those which address the criteria for graduation of certified 8(a) firms. The fixed program participation term employed at this time by the SBA is an affront to the intent of the Small Business Act, to Public Law 95-507, and to minority businesses which hope to enter into the mainstream of the American economy. In GRC's original 1980 business plan, we had projected $600,000 for 1981 in 8(a) support but received only $107,000 in actual 8(a) contracts--only 18 percent of our projected support. We received this 18 percent of our goal in 1981 in spite of our intense marketing campaign to Federal agencies and

contracting officers. In 1982, GRC received only $49,000 in 8(a) contracts, representing only 6 percent of our original goal of $850,000 in contract support in the 8(a) program. Again in 1982, we actively sought 8(a) contracts but were unable to convince the Federal agencies to award us significant 8(a) contracts.

To show you that these misgivings in 8(a) support for our firm were not signs of GRC's lack of ability or lack in marketing activity, our sales in the open and competitive market increased frm $486,000 in 1980 to $656,000 in 1981, an increase of 39 percent and near to our planned goal of $700,000 for 1981. In 1982, our non-8(a) sales rose to $871,000, an increase of 33 percent over 1981 and again close to the goal of $1,000,000 as projected in our original business plan. Last year, we were required by the SBA to rewrite our goals in our business plan in accordance with PL96-481 regarding the Fixed Program Participation Program. For 1982, we had lowered our 8(a) projected contract support to $450,000 but secured only one contract for $49,000. At the same time, we exceeded our goal for non-8(a) contract support by $21,000. Our projected goal for 1983 8(a) support is $800,000; however, to date, we have not received one 8(a) contract this year.

For reasons which are unclear to me, the Federal agencies located in the Western Region either have refused to participate with architectural and engineering consultants in the 8(a) program or have participated to a very small, almost insignificant, extent. GRC has continuously marketed to the agencies in the Western Region, but has failed to secure significant 8(a) support. Department of Defense agencies spend large amounts of Federal dollars in the architectural and engineering profession in the State of California, but these agencies have refused to make a commitment to utilize 8(a) consulting firms. I know, for example, that the Navy, Western Division, promotes the 8(a) contracts to consultants.

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Similarly, the Army Corps of Engineers and the Air Force dislike awarding 8(a) contracts to consulting firms. While one would think that the U.S. Geological Survey would be the first place for a geologist to turn, the U.S.G.S., in fact, would not award us any 8(a) contracts, even though we met with a number of contract officers in that agency. I have met with numerous contracting officers in the San Francisco area, in Denver, and here in Washington, D.C., and only a few have been helpful to our participation in the 8(a) program.

H.R. 863, I beleive, adequately addresses, at least for now, this problem with 8(a) contractors and the graduation of 8(a) contractors from th SBA progarm. I fully support the conceptual provisions for the criteria of competitiveness. The future measurement of these criteria remains vague to me, but there is no doubt in my mind that competitiveness is the key to assisting disadvantaged businesses enter into the mainstream of our society. The proposed requirements of 85 percent of all the firm's criteria and 75 percent of the criteria in each of the financial, management, and marketing functions are excellent benchmarks for a firm to achieve.

In the specific case of GRC, we expect to meet our goals in the non-8(a) market according to the projections in our business plan. However, without the necessary 8(a) support, we will not grow as a firm to become competitive with the current fixed program date. In our business plan, we hope to reach $2,500,000 in sales in 1985. However, this projection is based upon $2,100,000 in 8(a) contract support over the next two years. That $2,100,000 represents nearly ten times the 8(a) contract support which we received over the last three years.

I would also like to take this opportunity to address current size standards employed by the SBA. My understanding is that the SBA is currently planning to lower the small business size standard to $3.5 million annual sales from the current $7.5 million for architectural and engineering firms. This

lowering of the size standard would allow small and disadvantaged minority businesses to successfully compete on small business set-asides. We fully support the proposal in H.R. 863 to exclude 8(a) contracts when computing the size of the business.

Mr. Chairman, in the architectural and engineering professions, it is my opinion that it generally requires $3.5 million in annual sales to be truly competitive with similar mainstream businesses. At that point, the firm will usually employ about 50 persons. Although our business plan calls for only $2,500,000 annual sales, including 8(a) contracts, for 1985, we have every intention of attempting to reach that competitive level of $3.5 million in annual sales within the next five to ten years. If the 8(a) program will employ the proposed criteria of competitiveness for determining a graduation date, along with the deletion of the 8(a) contract support from applicable small business size standards and a greater commitment to 8(a) consulting firms, Geo/Resource Consultants will have every hope of becoming a competitive mainstream business.

Thank you for hearing my views today.

Mr. MITCHELL. Thank you very much. It was fascinating testimony, and I believe you. I think you are going to succeed, if you can buy the time.

Mr. JOE. That is right.

Mr. MITCHELL. Have you asked for an extension on your fixed program participation term?

Mr. JOE. I will be able to ask in about 1 year with the extension.

Mr. MITCHELL. In other words, you are about 3 years in there and you can't ask until you are 1 year away.

Mr. JOE. That is right.

Mr. MITCHELL. OK. But you do intend to ask for an extension.

Mr. JOE. Definitely.

Mr. MITCHELL. I would like to mention on the record that this is one of the things that I recommended to the Secretary of Commerce—and I am glad you got back, Mr. Daub—that in terms of the 450 firms such as yours that are scheduled to be graduated this year, that because of the vicissitudes of the economy and so forth, we should just blanketly extend them. The law already permits that and it just seems to me to simplify things a great deal and help us buy some time with these firms that are going to be forced out of the program this year. I merely made that recommendation. I don't know whether you will accept it or not.

Mr. Arguijo, I am just amazed at what you had to go through to get such piddling little contracts.

Now, according to your testimony you marketed the Navy's ship parts control 1½ years and got a $16,000 contract; Navy Ocean Systems in San Diego, 1½ years and you got a $31,000 contract; Naval Aviation Supply Center, 2½ years and you got a $31,000 contract; Naval Aviation Supply Center, 2½ years and you got a $41,000 contract.

Could you begin to estimate what the cost was just to do the marketing?

Mr. ARGUIJO. Very costly and very time consuming.

Mr. MITCHELL. Obviously, it took away from your business——

Mr. ARGUIJO. Right.

Mr. MITCHELL [continuing]. While you were struggling to get some contracts that really perhaps don't even cover the cost of your marketing. I guess I am so appalled by this because, darn it, this is the job of the SBA. This is what they are supposed to do.

They are supposed to go out and aggressively seek contracts and I am not going to buy the argument that they don't have the personnel to do it. If that is true, then they have got to explain to me why they are consistently reducing personnel, particularly in the minority business program. As I recall it, MSB personnel in the central office was at 70 at one time. It dropped from 70 down to around 50. The latest indication we have is it is going to be dropped down to 40.

So if they are deliberately cutting their personnel, I don't see how they can advance the argument that they don't have the personnel to do the marketing for you. I am just appalled by this. I hope that the legislation we are proposing will help to eliminate some of this kind of foolishness.

Mr. Joe, I honestly don't know how we can break the resistance in terms of architects and engineers. It almost seems as if there is

a hidden agreement some place, that somebody got in a back room some place in Government and said, "Look, we can't use you."

For the 12 to 13 years now that I have been working in this arena, the architects and engineers have simply been excluded in terms of contracts—minority architects and engineers.

I have shot my best shot. I have lapsed into profanity on one occasion. But it is just like an agreement that we are not going to use minority architects and engineers. I don't know how we can do that except that there is one little bit of hope and that is under the Innovation and Research Act which mandates a certain percentage of the R&D be set aside for small businesses. But frankly, I wish somebody would give me some new strategies.

Mr. JOE. Well, I have to say that there are some agencies that are contracting to 8(a) firms now I know GSA is.

Mr. DAUB. Yes. I was going to say we have received a number of architects and engineers just recently out in Nebraska.

Mr. JOE. In the Coast Guard.

Mr. MITCHELL. I must go on record as saying that in the past, oh, 9 months I have seen some slight improvement. But I also have to emphasize that I am not ecstatic about that after 13 years of dabbling and to see this slight improvement really doesn't make me ecstatic.

Gentlemen, thank you and I appreciate your support for the legislation we are proposing.

Mr. Daub.

Mr. DAUB. Just to get some things on the record, I, of course, went to the floor for a vote and did not hear your formal testimony. But let me ask each of you a couple of questions because staff has done some work and I just want to get these questions clarified for the record and for the review of other members later on in terms of their analysis of the record. Mr. Arguijo, can you remember why it took 3½ years for you to get certified?

Mr. ARGUIJO. Yes. Some of the problems were that, as I was going through the process, from Los Angeles to San Francisco and eventually to Washington, as I went from one review after another, some of the data submitted became outdated.

Mr. DAUB. The Council had to go back——

Mr. ARGUIJO. So we had to go back and update it all the time. Then there was a point there where all applications were suspended for about a year.

Mr. DAUB. Was there any hunch on your part that maybe there were a bunch of other firms in your same area that were already certified and getting a bunch of the business that was available, and so therefore things somehow seemed to drag in relation to you and your application?

Mr. ARGUIJO. It could be. I know there were some other companies in the program but I wouldn't know why my particular application——

Mr. DAUB. You didn't have any feeling that that was a part of the problem, just bouncing around, getting the papers certified.

Mr. ARGUIJO. That is right.

Mr. DAUB. Do you think it is too complicated?

Mr. ARGUIJO. Definitely.

Mr. DAUB. Mr. Joe, is your given name J-O-E?

Mr. JOE. Last name is Joe, yes.

Mr. DAUB. OK. I want it to be clear in the record if it was C-H-O-I or something else.

Mr. JOE. It should have been. [Laughter.]

Mr. DAUB. OK. I understand. You said in your prepared statement, at any rate, the fixed participation term employed at this time by the SBA is an affront to the intent of the Small Business Act.

Could you give us your reasons for saying that so we have that explained on the record?

Mr. JOE. Yes. My basic opinion is that it just does not give us enough time to assertively become competitive in the market. That is really the basic premise behind that particular statement.

Mr. DAUB. On page 3 in your statement you support the criterion of competitiveness but comment that their future measurement seems vague. Would you agree that SBA also will have difficulty in making objective measurements of these somewhat objective criteria such as management capability or that sort of thing?

Mr. JOE. Very possibly, because—well, the aspect of competitiveness is, I think as Mr. Adams, a vague point of view and, you know, we haven't gotten to the details of how we are going to rate competitiveness yet in areas of management, technical support, financial, et cetera.

My own opinion from my firm is that we are currently competitive in some of the markets with, again, some of the large firms and in some cases we are very friendly with the large firms and that has been an advantage to us, where we would joint venture or be a major subcontractor with a very large firm. So essentially to foster more business you have got to be friendly with the large corporations.

Mr. DAUB. That would bring me then to my final question to you and that is: If we exclude 8(a) sales from the size standard determination, then do you think we would run a risk of having the SBA supporting some corporations that are indeed quite large compared to you?

Mr. JOE. Well, I think they are doing that already in the 8(a) program because in my competition in the open competitiveness of 8(a) contracts—and I say they are very competitive on a national buy—many of the firms such as mine would bring in a large corporation to give them that proposal and technical support and then the small 8(a) firm would subcontract out 40 percent of their contract to the large firm. I know that is widespread in the 8(a) program.

Mr. DAUB. Did you answer to the chairman or before I came what the percentage is of your total business that is now currently 8(a)?

Mr. MITCHELL. Yes; he did.

Mr. DAUB. That is on the record. I can review that later then.

Mr. JOE. Currently about 4 percent 8(a).

Right now about half of my sales are 8(a) and half not.

Mr. DAUB. OK. Thank you very much, Mr. Chairman.

Mr. MITCHELL. Thank you. For the record I think we ought to give some data here in terms of the Small Business Administration's permanent minority small business positions.

In the minority small business category as of fiscal year 1982 there were 361 positions; for fiscal year 1983–84, 315, which means a net reduction of 46 people or roughly 13 percent.

I just cannot for the life of me understand how they advance the argument that they don't have the personnel to deal with these minority business problems and at the same time agree to a 13-percent reduction. I just wanted that to be on the record.

Gentlemen, thank you. We will get to our last two witnesses for this morning. It is Mr. William Madison——

Mr. DAUB. Mr. Chairman, could I be on record, excuse me, in sympathetic query to your data just entered in the record?

Mr. MITCHELL. Yes.

Mr. DAUB. I, too, find that a difficult question to answer in light of what our objectives are.

Mr. MITCHELL. Thank you very much.

Mrs. Norma Leftwich and Mr. William Madison are our last two witnesses. These witnesses come from the Department of Defense and GSA. Thank you very much for being here. We did receive prepared copies of your testimony and I would recommend that you simply highlight certain points in your testimony because the entire testimony will be reproduced in the record.

PANEL CONSISTING OF NORMA LEFTWICH; AND WILLIAM F. MADISON

TESTIMONY OF NORMA LEFTWICH, DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION, OFFICE OF THE SECRETARY OF DEFENSE, DEPARTMENT OF DEFENSE

Mrs. LEFTWICH. Mr. Chairman, it is a pleasure to be here today on behalf of the Department of Defense. We would like to offer a few comments on the Defense Department's involvement with the 8(a) program.

As my prepared testimony reflects, Defense is very proud to participate in the program. We have strongly supported it. We have contributed significantly we think to the program's overall growth and we are certainly dependent upon the 8(a) program to achieve our minority business procurement goals.

I think that we detailed in my statement that we have seen growth from fiscal year 1969 when $8.5 million was awarded through the 8(a) program to some $1.26 billion awarded through the 8(a) program in fiscal year 1982.

Historically, the 8(a) program has represented from a high of 67 percent of our total minority program accomplishment in 1974 to approximately 46 percent of our accomplishment in fiscal year 1982.

In addition to the tremendous growth in dollars, we have seen a tremendous growth in the size, scope, and sophistication of our 8(a) contracts. Of particular note is a recent award made by the Department of the Air Force for $32 million award to the Sonicraft Corp. This contract is for the design and development of a very low frequency communications device. The contract has the potential of reaching $267 million when the contractor reaches full production.

Let me go on to say that the intent of our participation here today is to outline our great support of the program, our view that

the program has grown with our help, certainly with the expansion of the capability of firms in the 8(a) program, and that we look to the 8(a) program to continue to absorb the kinds of requirements that DOD is interested in having awarded through it.

However, we cannot support H.R. 863. It is the administration's position that fixed program participation terms are an acceptable mechanism to graduate firms and that firms ought to be graduated.

We think that fixed program participation terms are necessary to provide a means for new firms to continually enter the program. Therefore, we see no need for this legislation at this time.

[Mrs. Leftwich's prepared statement with attachments follows:]

PREPARED STATEMENT OF NORMA B. LEFTWICH, DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION, OFFICE OF THE SECRETARY OF DEFENSE, DEPARTMENT OF DEFENSE

I AM NORMA LEFTWICH, DIRECTOR OF THE OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION FOR THE OFFICE OF THE SECRETARY OF DEFENSE. I AM PLEASED TO BE HERE TODAY ON BEHALF OF THE DEPARTMENT OF DEFENSE, TO COMMENT ON THE 8(a) PROGRAM.

FIRST, LET ME PROVIDE A HISTORICAL PERSPECTIVE ON DOD'S PARTICIPATION IN THE 8(a) PROGRAM. I THINK IT WILL BE QUITE EVIDENT FROM THE STATISTICS I AM ABOUT TO PROVIDE THAT DOD HAS, THROUGH THE YEARS, STRONGLY SUPPORTED THE 8(a) PROGRAM; CONTRIBUTED SIGNIFICANTLY TO THE PROGRAM'S OVERALL GROWTH; AND, IS DEPENDENT UPON THE 8(a) PROGRAM TO ACHIEVE OUR MINORITY BUSINESS PROCUREMENT GOALS.

IN FY 1969, THE EARLIEST YEAR FOR WHICH WE HAVE DATA, DOD AWARDED A TOTAL OF $8.5 MILLION TO MINORITY BUSINESS THROUGH THE 8(a) PROGRAM. EXTRAORDINARY GROWTH IN OUR OVERALL PROGRAM, GREATLY ENHANCED BY THE PASSAGE OF PUBLIC LAW 95-507, RESULTED SOME 13 YEARS LATER, FY 1982, IN TOTAL AWARDS TO MINORITY BUSINESSES OF $2.77 BILLION, OF WHICH $1.26 BILLION WAS AWARDED THROUGH THE 8(a) PROGRAM. (YEAR-TO-YEAR GROWTH IS DETAILED IN THE FIRST CHART ACCOMPANYING MY TESTIMONY)

HISTORICALLY, THE 8(a) PROGRAM HAS REPRESENTED FROM A HIGH OF 67% OF OUR TOTAL MINORITY PROGRAM ACCOMPLISHMENT IN 1974, TO APPROXIMATELY 46% OF OUR ACCOMPLISHMENT IN FY 1982. IT HAS AVERAGED 44.7% SINCE 1978. (SEE CHART 2). WE ARE PLEASED WITH THE PERCENTAGE GROWTH OF THE COMPETITIVE AND SUBCONTRACTING PORTIONS OF OUR PROGRAM, BUT FROM OUR PERSPECTIVE, THE 8(a) PROGRAM IS THE CORNERSTONE OF OUR TOTAL MINORITY BUSINESS PROGRAM.

IN ADDITION TO THE TREMENDOUS GROWTH IN DOLLARS AWARDED THROUGH THE 8(a) PROGRAM, IT IS IMPORTANT TO NOTE THAT THE SIZE AND SOPHISTICATION OF OUR 8(a) CONTRACTORS HAS ALSO INCREASED SIGNIFICANTLY. EXAMPLES OF 8(a) CONTRACT AWARDS OF PARTICULAR NOTE INCLUDE: A $32 MILLION AWARD BY THE AIR FORCE TO SONICRAFT CORPORATION, CHICAGO, ILLINOIS, FOR THE DESIGN AND DEVELOPMENT OF A VERY LOW FREQUENCY COMMUNICATIONS DEVICE. THIS AWARD COULD REACH A TOTAL VALUE OF $267 MILLION IF IT GOES INTO FULL PRODUCTION. THIS AWARD IS ALSO THE LARGEST SINGLE CONTRACT EVER AWARDED TO A MINORITY BUSINESS BY THE DOD OR ANY FEDERAL AGENCY. ADDITIONALLY, A $27.7 MILLION CONTRACT FOR THE MANUFACTURE OF 6HP STANDARD MILITARY GASOLINE ENGINES WAS AWARDED BY THE ARMY TO WELBILT ELECTRONIC DIE

CORPORATION, AN 8(a) FIRM LOCATED IN THE SOUTH BRONX. THE DEFENSE LOGISTICS AGENCY RECENTLY AWARDED AN 8(a) CONTRACT FOR THE NEW KEVLAR HELMET TO DEVILS LAKE SIOUX MANUFACTURING CORPORATION OF FORT TOTTEN, NORTH DAKOTA VALUED AT $12.3 MILLION. THIS IS THE SECOND PRODUCTION CONTRACT FOR THIS NEW HELMET WHICH WAS AWARDED AFTER THE COMPANY SUCCESSFULLY COMPLETED A PRODUCTION TEST CONTRACT FOR THIS ITEM. THE NAVY AWARDED A LEVEL OF EFFORT CONTRACT TO SYSTEMS MANAGEMENT AMERICAN, INC. OF NORFOLK, VIRGINIA, FOR THE SHIPBOARD NONTACTICAL AUTOMATIC DATA PROCESSING PROGRAM. THIS CONTRACT IS CURRENTLY VALUED AT $5.3 MILLION, AND ANTICIPATED TO REACH BETWEEN $30-$40 MILLION AT CONTRACT COMPLETION.

I THINK IT IS FAIR TO CONCLUDE THAT THE DEPARTMENT OF DEFENSE HAS NOT ONLY STRONGLY SUPPORTED THE 8(a) PROGRAM, BUT HAS MADE A SIGNIFICANT INVESTMENT IN THE DEVELOPMENT, GROWTH AND, INDEED, FLEDGLING SUCCESS OF MANY 8(a) FIRMS. OF COURSE, CONTRACTS OF THE SIZE AND COMPLEXITY OF THOSE PREVIOUSLY MENTIONED DO NOT HAPPEN OVERNIGHT. FIRMS SUCH AS SONICRAFT, WELBILT, DEVILS LAKE SIOUX AND SYSTEMS MANAGEMENT AMERICAN THROUGH THE YEARS HAVE DEVELOPED TRACK RECORDS WHICH HAVE ILLUSTRATED THEIR ABILITY TO PERFORM EFFECTIVELY AND EFFICIENTLY--TRACK RECORDS WHICH THEY MIGHT NOT HAVE BEEN ABLE TO ESTABLISH HAD IT NOT BEEN FOR THE 8(a) PROGRAM.

MR. CHAIRMAN, YOU ASKED FOR AN ASSESSMENT OF HOW FIXED PARTICIPATION TERMS WILL AFFECT OUR ABILITY TO ATTAIN MINORITY PROCUREMENT OBJECTIVES SET BY THE PRESIDENT. THE ADMINISTRATION'S POSITION IS THAT FIXED PROGRAM PARTICIPATION TERMS IS AN ACCEPTABLE MECHANISM TO ENSURE THAT GRADUATION DOES OCCUR AND THAT NEW FIRMS CAN THAN AVAIL THEMSELVES OF THE BENEFITS OF THE 8(a) PROGRAM. WE WOULD ANTICIPATE THAT THE GRADUATING FIRMS WILL SUCCESSFULLY PARTICIPATE IN OUR COMPETITIVE, SMALL BUSINESS SET-ASIDE AND SUBCONTRACTING MARKETPLACE THEREBY CONTINUING TO CONTRIBUTE TO OUR PROCUREMENT STATISTICS. ADDITIONALLY, WE UNDERSTAND SBA PROPOSES TO CERTIFY APPROXIMATELY 500 NEW FIRMS WHICH THEY FEEL WILL KEEP CONSTANT THE CAPABILITY OF THE 8(a) PROGRAM TO ABSORB OUR REQUIREMENTS. ACCORDINGLY, WE BELIEVE THAT THE 8(a) PROGRAM NOTWITHSTANDING FIXED PROGRAM PARTICIPATION TERMS WILL CONTINUE TO CONTRIBUTE A SIGNIFICANT AMOUNT OF OUR MINORITY BUSINESS AWARDS. THEREFORE, WE OPPOSE THE PASSAGE OF H.R. 863.

MR CHAIRMAN, THIS CONCLUDES MY PREPARED REMARKS. I WILL ANSWER ANY QUESTIONS YOU MAY HAVE.

SMALL DISADVANTAGED BUSINESS AWARDS

	FY 69	FY 70	FY 71	FY 72	FY 73	FY 74	FY 75	FY 76 +T	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
SECTION (8a)	$8.5	13.4	27.4	72.8	97.7	144.1	170.3	279.6	310.9	404.8	550.4	713.6	1,083.0	1,262.9
SUB-CONTRACT	*	*	*	*	$22.1	52.2	69.1	131.0	153.2	250.6	344.5	452.3	554.0	578.4
DIRECT PRIME	*	*	*	*	*	$19.0	26.0	27.0	61.7	216.3	358.9	493.5	791.2	923.8
TOTAL DOD	$8.5	13.4	27.4	72.8	119.8	215.3	265.4	437.6	525.8	871.7	1,253.8	1,659.4	2,428.2	2,765.1

$ = IN MILLIONS
* IDENTIFICATION OF PROGRAM PERFORMANCE NOT STARTED

THE DOD DISADVANTAGED BUSINESS PROGRAM PERCENTAGE RELATIONSHIPS

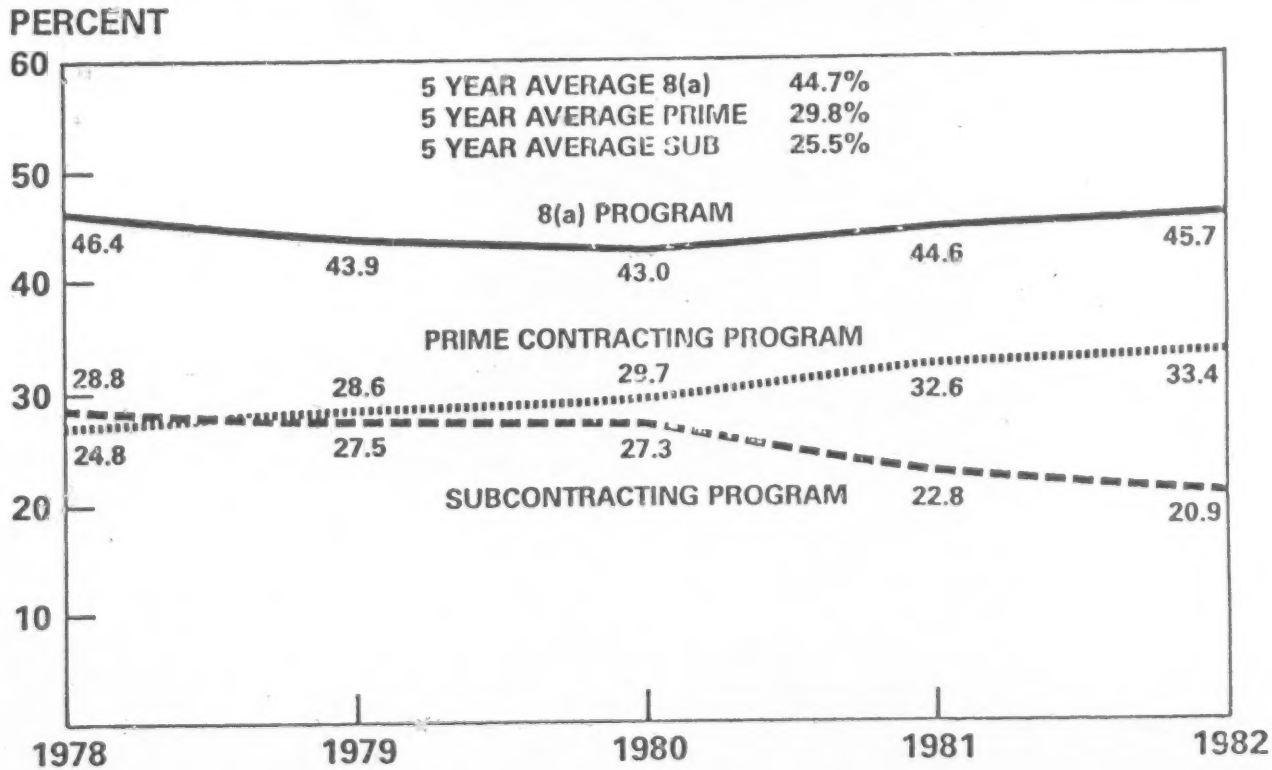

CHART 2

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
DOD PERFORMANCE AS COMPARED TO CIVILIAN FEDERAL DEPARTMENTS IN THE THREE BASIC PROGRAM AREAS
SECTION 8(a), PRIME CONTRACTING & SUBCONTRACTING
(DOLLARS IN MILLIONS)

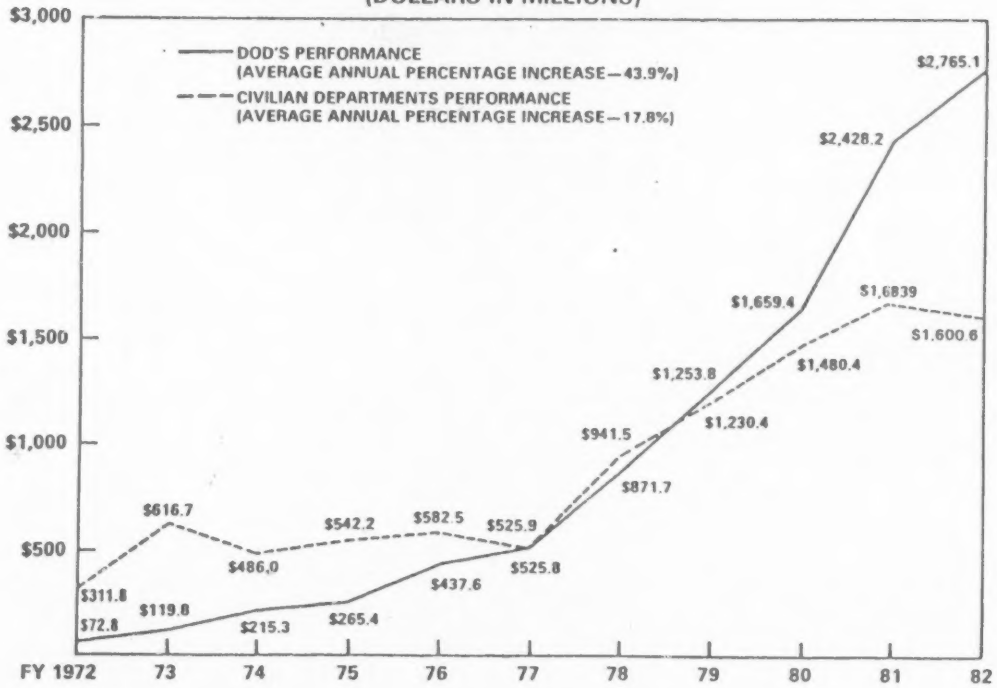

CHART 3

Mr. MITCHELL. Mr. Madison.

TESTIMONY OF WILLIAM F. MADISON, DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION, GENERAL SERVICES ADMINISTRATION

Mr. MADISON. Thank you, Mr. Chairman. It is indeed a pleasure for me to be here today to present GSA's views on H.R. 863 and to talk about the success of the 8(a) program as it relates to the General Services Administration.

As you know, over the years GSA has been a strong supporter of the 8(a) program. During fiscal years 1980 through 1982, 8(a) awards constituted an average of 42.5 percent of the total MBE accomplishments at GSA.

The General Services Administration is, too, opposed to this bill. It is the Administration's position, which we support, that under the current procedures established by Public Law 96-481, 8(a) concerns are subject to fixed program participation terms [FPPT]. While not insuring the success of the firm, this system gives contractors skills and experiences vital for business development.

I would now like to comment on the impact which the current FPPT will have on GSA's ability to accomplish its MBE goals. We think that the imposition of FPPT's on 8(a) firms should not in itself have an adverse impact on GSA's achievement of its MBE goals, provided SBA has adequately monitored and managed its 8(a) portfolio.

As you know, over 400 firms are scheduled to be graduated from the 8(a) program by April 1984. Forty-three of these firms scheduled to graduate were recipients of 84 of the 215 8(a) contracts awarded by GSA during the last fiscal year.

The total dollar award under the 8(a) program was $63.4 million, of which 47 percent or $31.1 million was awarded to these 43 firms.

Mr. MITCHELL. Forty-seven percent?

Mr. MADISON. Forty-seven percent or $31.1 million. If the replacement of the firms have the expertise, capabilities, and track records to satisfy our more highly technical requirements, we don't think that our ability to obtain our goals should be impaired.

The presumption is that SBA through a coordinated effort with GSA and other procurement agencies has prepared new 8(a) firms to step in and fill the void created by the exit of the 400 firms.

Mr. Chairman, I would be remiss in appearing before you and this committee today without extending GSA's sincere gratitude for the hard work and lofty purposes demonstrated in your continuing interest in the area of small and minority business development. I think, working closely with this committee, the SBA and the Minority Business Development Agency, we will make steady progress in achieving our common goals and objectives.

Thank you.

[Mr. Madison's prepared statement follows:]

PREPARED STATEMENT OF WILLIAM F. MADISON, DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION, GENERAL SERVICES ADMINISTRATION

I am pleased to be here on behalf of the Administrator Gerald P. Carmen, to present our views on H.R. 863, which would modify the current Small Business Administration (SBA) 8(a) program "graduation" policies.

First, Mr. Chairman, let me say that we at GSA have been strong supporters through the years of the 8(a) program, and contributed to the growth and development of many 8(a) firms through our procurement programs. I think it is important to note that in placing contracts with these 8(a) firms, we not only foster their growth but also achieve our minority business enterprise procurement goals. During fiscal years 1980 thru 1982, 8(a) awards constituted an average of 42.5 percent of the total MBE procurement accomplishments in the Agency.

The General Services Administration is opposed to H.R. 863. Under current procedures established by Public Law 96-481, 8(a) concerns are subject to fixed program participation terms (FPPT). While not insuring the success of a firm, this system gives contractors skills and experience vital for business development. H.R. 863 would replace the FPPT with targets, objectives and goals designed to result in the competitiveness of a small business firm. Until a firm achieved these performance levels, it would be entitled to program benefits. We believe that H.R. 863 would reduce the incentive of an 8(a) concern to continue to improve and would limit participation in the program to relatively few firms.

Mr. Chairman, I would like to comment on the impact which the current FPPT will have on GSA's ability to accomplish its MBE goals. The imposition of FPPT on 8(a) firms should not in itself have an adverse impact on GSA's achievement of its MBE goals provided SBA has adequately monitored and managed the 8(a) portfolio.

As you know, over 400 firms are scheduled to be "graduated" from the 8(a) program by April 1984. Forty-three of these firms scheduled to graduate were recipients of 84 of the 215 8(a) contracts awarded by GSA during fiscal year 1982. The total dollar award under the 8(a) program was $63.4 million of which 47 percent or $31.1 million was awarded to these 43 firms. It is important to note that the total dollars awarded under the 8(a) program conprised 42.1 percent of our total minority business enterprise awards.

If the replacements for these firms have the expertise, capabilities and track records to satisfy our more highly technical and sophisticated requirements, GSA's ability to attain its goals will not be impaired. However, it is important to note that the prerequisites for receiving the more substantial and big dollar contracts are a proven track record and the familiarity of our contracting people with an 8(a) firm. The presumption is that SBA through a coordinated effort with GSA and the other procurement agencies has prepared new 8(a) contractors to step in and fill the void created by the exit of these 400 firms.

Mr. Chairman, I would be remiss in appearing before you and this committee, without extending GSA's sincere gratitude for the hard work and lofty purposes demonstrated in your continuing interest in the area of small and minority business development. Working closely with the SBA and the Minority Business Development Agency, we will make steady progress in achieving our common objectives.

This concludes my prepared remarks and I will answer any questions at this time.

Mr. MITCHELL. Thank you both very much for your testimony. You have appeared before various committees of the Congress before, and certainly you have been before this committee, so you know what my lead-off question is.

The testimony that you have submitted—was it approved by any entity of Government?

Mrs. LEFTWICH. My testimony was approved by OMB.

Mr. MITCHELL. By the Office of Management and Budget.

And yours, Mr. Madison?

Mr. MADISON. By the Office of Management and Budget.

Mr. MITCHELL. And the second question that I always raise—you know what it is.

Is the testimony that you presented today, and that has been approved by the Office of Management and Budget, substantially the same in intent as your original draft testimony?

Mrs. LEFTWICH. Mr. Chairman, much of the testimony that we submitted today is the same as our original.

Mr. MITCHELL. Much, you say.

Mrs. LEFTWICH. Much. The statistics, the figures are the same as we submitted.

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It is not uncommon for OMB to put us through a number of iterations of our testimony until they are satisfied that it correctly reflects the position of the administration.

Mr. MITCHELL. And this would be your statement also?

Mr. MADISON. That would be my statement also, Mr. Chairman.

Mr. MITCHELL. Now, the third question in that area.

In terms of numbers, data, sure, I can see OMB doing this, to make sure that it is letter perfect; in terms of the bottom line of your position on this legislation, was the position in the original draft consonant with the OMB approved position?

Mrs. LEFTWICH. Mr. Chairman——

Mr. MITCHELL [pause]. No, no, don't. Don't even bother to answer, because I know the answer. That is unfair. That is really unfair.

So, I take that back.

All right.

Mr. Madison, you made an awfully large presumption. You said that the exit of some 400 or 500 firms would not hurt your effort on behalf of minority business assuming that the Small Business Administration had been working with other firms, bringing them to maturity so that they could come in and replace the firms that are being exited. Based on all the testimony that we have heard this morning, that is an awfully large presumption and it is not likely to happen.

You have heard testimony saying that SBA has not done this. Those who have made it have done it on their own.

So, I don't think that you ought to make that assumption.

You have gotten a list of the firms that would be exited?

Mr. MADISON. Right.

Mr. MITCHELL. And you are saying that their exit would not affect your agency's level of participation provided that that large assumption comes true, which I disagree with?

What was the dollar value of 8(a) contracts, your agency or department awarded to these firms last year?

Mr. MADISON. To those 42 firms that will be exiting?

Mr. MITCHELL. Yes.

Mr. MADISON. $31.1 million.

Mr. MITCHELL. And what was the total dollar volume?

Mr. MADISON. The total dollar volume under the 8(a) program was $66.4 million in fiscal year 1982.

Mr. MITCHELL. In other words, one-half——

Mr. MADISON. Practically one-half.

Mr. MITCHELL [continuing]. Was awarded to these some 40-some firms?

Mr. MADISON. That is correct.

Mr. MITCHELL. That would be exited from the program?

Mr. MADISON. That is correct.

Mr. MITCHELL. Mrs. Leftwich, the same question.

Mrs. LEFTWICH. The 440 firms that are due to be exited represented approximately $795 million in awards in fiscal year 1982.

Mr. MITCHELL. And what was your total award figure?

Mrs. LEFTWICH. Our total awards were valued at approximately $2.765 billion.

Mr. MITCHELL. That puts your subcontracting figure at about one-fifth?

Mrs. LEFTWICH. Yes, Mr. Chairman, and that puts our prime contract awards at about 36 percent.

Mr. MITCHELL. I love both of you, but it is awfully hard for me to assume that you are going to find firms that are going to fill in the breach to that extent.

Which leads me to my next question.

The President made or issued a statement in December that the goals of his administration insofar as minority businesses are concerned, would be $5 billion a year in procurement for each of the next 3 years—a total of $15 billion.

Would the exiting of these firms from GSA and DOD, in your opinion, allow your agency or department to reach the President's goal?

Mrs. LEFTWICH. Well, Mr. Chairman, we would anticipate, and certainly hope that exiting firms will still be captured in certainly our subcontracting marketplace and our small business set-aside marketplace, so that they will not be lost to the Defense Department.

Mr. MITCHELL. Oh, you shouldn't anticipate that, because I think the small business firms participating in your small business set-aside program would resent former 8(a) firms coming in and encroaching on their territory.

Mrs. LEFTWICH. But they can't stop it. The small business set-aside is available for competition for all small firms.

Mr. MITCHELL. I know that that is true, but you say they can't stop it—we have seen some programs stopped effectively through political pressures.

All right.

Do you think you are going to make the President's goal when these firms which got one-half of your total procurement are kicked out this year?

Mr. MADISON. I certainly hope so, Mr. Chairman, and, again, based on——

Mr. MITCHELL. Do you believe so?

Mr. MADISON. I believe so. That again is based on the assumption that the SBA will come up with firms who have like qualifications to meet the needs of our requirements.

Mr. MITCHELL. Please. We were doing fine until you came up with that awful assumption, and I am being very serious now. There is no reason for me as chairman of this committee to assume that that is going to happen.

There is just no reason based on past history.

Thank you both.

Mr. Daub.

Mr. DAUB. Mr. Chairman, I know you have heard the old saw before of what happens when you break the word "assume" down into its logical parts.

But what it amounts to, is that I don't want to make those assumptions either, and I want to explore the idea that indeed isn't what you mean to say, that given some degree of success—I don't want to put it on a scale of 1 to 100 now, and on some of these firms that have been in the program, in our program.

Aren't we going to have a number of them be competitive or viable to the extent that they will not be in the set-aside, and not in the 8(a), and not in small business but indeed somewhere along the line as a sub or a prime contractor or a supplier?

They are going to end up getting Government business; now, they may not fall into a category where we measure them as minority or disadvantaged anymore, but indeed we hope their business is able to continue to do business with your departments. Wouldn't that be a fair statement?

Mrs. LEFTWICH. I would certainly hope so.

We consider it a fair statement.

Mr. MADISON. We are certainly depending on that.

Mr. DAUB. Now, in the middle of all this, if we are graduating some firms, or exiting some firms, or whatever the term is that we are going to use, isn't it a condemnation of the program to say that we expect other firms to fill the vacuum to be able to get the 46.1 percent or the $765 million; is it not possible that, indeed, there will be firms that come into the program that can't do what the firms that have been in for 6, 7, and 8 years, that have developed expertise in the 8(a) program are doing now?

Wouldn't it be fair to say, and probably this is what Mr. Mitchell is trying to say?

Some of these firms that are 8(a) now on paper fill the numbers, but they may not have the expertise to negotiate a contract to take over part of the awards that we are talking about.

Would that be a fair statement?

Mrs. LEFTWICH. I don't know if it would be a fair statement. Again, we simply have to go on the presumption that firms can be competitive. We certainly see competitive minority firms in our direct contract awards. We see in that particular part of our program inching up very slowly.

Last year, we also awarded $900 million competitively to minority businesses, so I have got to assume, I think, that the data show that they are able to compete, and will be awarded contracts.

Mr. DAUB. Do you keep track in the Defense Department then of minority firms that aren't appendaged through the system from some other category?

Mrs. LEFTWICH. I am not sure I understand you, sir.

Mr. DAUB. You do keep track of a firm; you somehow qualify them, or determine that they are a minority?

Mrs. LEFTWICH. Oh, yes, yes. It is a self-certifying process. They will certify that they are minority.

Mr. DAUB. So, then, the awards you made to firms in that general category exceeded the 8(a) awards?

Mrs. LEFTWICH. No; they did not.

Mr. DAUB. $900 million, did you say?

Mrs. LEFTWICH. No; our total awards in 8(a) were $1.2 billion.

Mr. DAUB. I see. OK. But other direct bidding firms totaled $900 million?

Mrs. LEFTWICH. That is correct.

Mr. DAUB. Which is a figure larger than the $700-plus million that went to disadvantages——

Mrs. LEFTWICH. 440 firms.

Mr. DAUB. In this category, right?

Mrs. LEFTWICH. In this category.

Mr. DAUB. Right.

So, it may be, then, that your testimony, your conclusion is correct? I guess, from my point of view.

I find reluctance too. I like some of the things that are contained in this process of up and out, because that is what it is all about, and whenever we start to constrain, the way it used to be, we do have an apprehension, as to how it will go in the next round, with a new set of rules.

I have that apprehension too.

It seems to me that the facts are pretty clear, that we have had this program around long enough now, and there is enough attraction to it, that we may, Mr. Chairman, indeed, have some merit—and only time is going to tell—I guess that is the last point I want to make.

I see your apprehension; I read it; and I feel it, and I understand it. And I guess time will tell a little bit over a year or two, if this kind of contracting percentage, which I applaud you for, under the program, the work you have done with it; can continue to benefit other like firms that move in to that graduated gap that will occur, we worry about here on this committee right now.

I appreciate your comments, and your very brief, but very pointed testimony.

Mrs. LEFTWICH. Thank you.

Mr. MITCHELL. I appreciate it, also, and just for the sake of the record, I am looking at the DOD total awards in terms of the small disadvantaged business program. In 1981 total DOD purchases were $87 billion; in 1982, $102 billion, and your direct awards to minority firms has increased from $791 million in 1981 to $923 million in 1982. Your increase merely is in the total dollar amount of direct awards that you have made. It is possible that some of the same firms got more than one award; is that correct?

Mrs. LEFTWICH. That is correct.

Mr. MITCHELL. So, that doesn't necessarily mean a numerical increase in the number of businesses?

Mrs. LEFTWICH. Oh, no, I did not mean to project that. However, we have an increase of some 16 percent in the number of minority businesses that received contract awards from us during fiscal year 1982.

Mr. MITCHELL. Right—and also I would suggest that if some of your same firms got more than one award, it means that they have developed the kind of expertise that is not going to be found in new firms coming in, that SBA has so graciously helped to mature and become competent and competitive.

Thank you very much for your testimony.

Mrs. LEFTWICH. Thank you, Mr. Chairman.

Mr. MITCHELL. We will resume——

Mr. DAUB. Mr. Chairman.

Mr. MITCHELL. Yes.

Mr. DAUB. I want to amplify a minute on your comment. I guess it was said better than I was attempting to say it a minute ago, that indeed in that—I don't want to say "vacuum"—but in the movement of some firms out——

Mr. MITCHELL. I understood you——

Mr. DAUB. The gathered expertise over a period of time, while getting awards, there may not be firms that will come along in the program with that same expertise that can take up those same amount of dollars.

Mr. MITCHELL. I understood you perfectly, Mr. Daub.

I would be hard pressed to conclude that the firm that is coming in with 1 year of experience, just 1 year of 8(a) certification is going to be as competitive as a firm that has had 5 years in the program.

Mr. DAUB. Yes.

Mr. MITCHELL. That just doesn't seem logical.

Mr. DAUB. I share that, and only caveat my distinction with my able chairman and good friend, and that is, that I am not so sure that the program was set up, though, to be dollar for dollar, contractor for contractor, able to compete within that. Maybe it is time if we kind of had to work it a little bit, that we be sure that a couple of more firms can get in and mature.

Mr. MITCHELL. Precisely.

I would not disagree with you on that point at all.

It has been interesting this morning, and we will resume again tomorrow morning at 9 o'clock.

Thank all of you very much, for your participation, and your very able testimony.

[Whereupon, the hearing was adjourned until 9 a.m., the following day, Tuesday, April 20, 1983.]

H.R. 863, TO AMEND THE SMALL BUSINESS ACT

WEDNESDAY, APRIL 20, 1983

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS, COMMITTEE ON SMALL BUSINESS,

Washington, D.C.

The subcommittee met, pursuant to notice, at 9:06 a.m., in room 2359-A, Rayburn House Office Building, Hon. Parren J. Mitchell (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN MITCHELL

Mr. MITCHELL. Good morning. The hearing will now come to order.

Today we continue our hearings on H.R. 863, which I have introduced. Essentially, the thrust of my legislation is to try to address what I consider to be, and what others considered to be four major problem areas with regard to the operation of the Small Business Administration's Capital Ownership Development Program.

The first area provides for the establishment of criteria for competitiveness.

We are looking at the impact of the newly instituted fixed program participation term and what that impact will be on the present and future of minority businesses. We have indicated it is anticipated that as many as 450 minority firms will be eliminated from the 8(a) program during the course of this year, because they indeed signed fixed program participation terms.

I have indicated earlier in other hearings and in other statements that there is no doubt in my mind that some of those signings were under coercive circumstances.

Second, we are looking at size standards, which have been a perennial problem for this committee. We have had sufficient testimony to indicate that the size standards being used by the Small Business Administration are indeed outdated.

Last, we want to focus on the due process provisions of the bill and the extent to which that is accorded minority business persons when they face difficulties with the Small Business Administration. Yesterday we heard testimony that referenced the criteria of competitiveness, size standards, and fixed program participation terms.

Today in the first part of our hearing we will focus on the matter of according due process which is addressed in my legislation, H.R. 863.

I am delighted that Congressman Daub is with us again today. I certainly want to indicate that he is one of the members of this

committee who has shown an intense interest in minority business, and is always in attendance when we have these hearings, and I appreciate it.

Do you have an opening statement?

Mr. DAUB. I submitted that for the record at the beginning of yesterday's hearings, Mr. Chairman. I want to commend you for your interest in the 8(a) program, particularly because it is giving a lot of disadvantaged businesses an opportunity.

While we from time to time might differ on the ultimate way in which that that can best be expanded to allow additional firms to move into and benefit from the growth experiences offered by the 8(a) program, indeed I know that we will ultimately work together for that result. I appreciate your leadership.

Mr. MITCHELL. Thank you. We have worked together in the past, and there is no reason for me to assume that we will not in the future.

Mr. DAUB. I might say for the record, Mr. Chairman, I will have to leave for about a hour, but plan to be back. Part of the social security bill, which will be signed today contained the provision on the elimination of nonresident alien dependents from the trust fund, which I think that you and I agreed on. I must be in attendance. I am proud of that particular provision, and I will be right back.

Mr. MITCHELL. Fine. Be sure to give my best regards to the Chief Executive.

Mr. DAUB. I will do that, Mr. Chairman. I know that you mean that sincerely, and I will.

Mr. MITCHELL. We will start off with our first panel of witnesses: Mr. Charles Wallace, Mr. Frederick E. Barrett, and Mr. Walter Ramsey. Mr. Wallace is president of Wallace & Wallace Co.; Mr. Barrett is president of United Sounds of America, which I am pleased to say is located in my district in the city of Baltimore; and Mr. Walter Ramsey is the president of Rams-Head Construction.

Gentlemen, thank you, very much, for being here. I suppose that we might just as well start off in the order in which called with Mr. Wallace coming first. In addition, I think that we have copies of all of your testimony. In order to expedite matters, I would recommend to you that your entire testimony be submitted for the record, and that you simply address the high points, the most salient points that you wanted to make. On the other hand, if you desire to read your entire testimony, we can do that, but it is preferable that you just go through, and pick out the major points that you want to make.

Mr. Wallace, it is very good to see you again.

PANEL CONSISTING OF CHARLES WALLACE; FREDERICK E. BARRETT; AND WALTER RAMSEY

TESTIMONY OF CHARLES WALLACE, PRESIDENT, WALLACE & WALLACE, INC.

Mr. WALLACE. Thank you, Mr. Chairman. I would like to extend my appreciation to you and members of this committee for letting me testify on what I believe is a serious situation in the SBA today. I would like to ask that my whole testimony be put in the record.

There are a couple of typographical errors. My word processor sort of broke down on us, but we would be glad to correct that, and put it back into the record.

Mr. MITCHELL. Without objection, your entire statement is submitted for the record.

Mr. WALLACE. As you see in the highlights of my statement, SBA and I got along for about 8 or 9 years like sisters and brothers. All the same, we fell out because they think that I got too large in the program, and the program was too successful.

I made sure that the SBA program worked. I went out, and found a procurement for many of the minorities who did not know how or to have the sophistication enough to go out and find the installation stops in New York. I deprogramed and investigate all of the oil stops.

I never forget one place in Northport, where they told us, "We are good to you; we let you use the bathrooms here." That is what I had to go through with the 8(a) program.

As you see, there were some commitments for the SBA to do some things for me, as we go through. I was supposed to do some things for SBA. I have done my part, and SBA has done part of their part. As I say, the SBA is supposed to set aside profitable contracts; that was an argument. They did set aside contracts. They guaranteed me profit through the business development. They did that to the best of their ability.

Mr. MITCHELL. May I interrupt you for just a moment.

Many of us know the nature of your business, but for the record would you state the nature of your business?

Mr. WALLACE. The nature of my business is oil, and oil-related businesses. As we go on, the joint venture that SBA said they were partners in the refinery and the joint venture, and the equipment that they said they would set aside, they did set aside 85 percent of that equipment, which is still in Tuskegee, Ala.

But I think that if you carefully read my statement, you will find out that this statement makes a lot of accusations, which are true. We can sign this as an affidavit as well as a statement. It does not make any difference to me.

But the crust of the whole thing—and we just have to call an ace an ace, that is to say, to call a skunk by any other name does not diminish the stink—the reason that they do not want this bill to pass is because they can control the 8(a).

I cannot for the life of me understand why they say that you have to put some 8(a) recipients out, to put others in, when they simply could expand the program, that is just plain and simple.

To give you a good example of how they will work: When SBA put me off the program without due process of law, I had the famous installation of West Point, the arsenal, which is up in Dover, N.J. They own facilities in which all of our shipments come from overseas. Now when they did not set aside those stops for Wallace, which I had for some 8 to 9 years; they strictly went back to the major oil companies. They did not go to the minority. They did not set them aside for minority. So this is what would happen when they say bring in 8(a) recipients to replace the ones that have the expertise to be able to do the job.

To give you an example about the expertise: The same year that I was off the program, another 8(a) firm could not come up with the prices, because I was not there to go down to the Defense Department, and get a fair and equitable price, which they were supposed to give us a fair market price. We argued about that for 10 years: What is a fair market price. We do not know today what is a fair market price. It is whatever the Defense Department can pay. SBA used to dump in BDE, and would not argue the point. I argued until I was blue in the face, and I have documents that would cover this whole table where I complained about using the BDE for a price subsidy.

They finally changed, and said that they would not use BDE for price subsidy. We can go on, but what I want this committee to understand is what I faced; the nightmare that I faced with SBA, where they criminally investigated me, devastated me, my family, and my business, and tried to make out that I was some crook or something, that I took Government money when I was in the joint venture.

I put it there that the three administrators lied, and I do not make any apologies about it, saying that I criminally took the SBA's money when it was not a fact.

Mr. MITCHELL. Let me ask a couple questions to be sure I understand things properly.

Mr. WALLACE. All right.

Mr. MITCHELL. When were you taken off the 8(a) program?

Mr. WALLACE. Two years ago.

Mr. MITCHELL. Two years ago?

Why were you taken off? What reason did SBA give?

Mr. WALLACE. Because they said that I owed the SBA money, and that I was being criminally investigated.

Mr. MITCHELL. They said that you owed the SBA?

Mr. WALLACE. Money.

Mr. MITCHELL. How much, do you know?

Mr. WALLACE. $10 million.

Mr. MITCHELL. $10 million?

Mr. WALLACE. Spent for the joint venture; yes.

Mr. MITCHELL. And you were under a criminal investigation?

Mr. WALLACE. For 5½ years.

Mr. MITCHELL. Has that investigation ended?

Mr. WALLACE. Yes, it has ended.

Mr. MITCHELL. Has the issue been heard in court?

Mr. WALLACE. No.

Mr. MITCHELL. The criminal issue?

Mr. WALLACE. The criminal issue, as I have stated in my statement here, John Martin, Jr., has written a letter saying that there was no merit to this whatsoever. They sent a statement. We quote from it.

Mr. MITCHELL. The matter was never heard in criminal court. Is that correct?

Mr. WALLACE. No more than the grand jury, as far as I know.

Mr. MITCHELL. The letter that you are referring to is on what page of your testimony?

[Pause.]

Mr. WALLACE. On page 14.

Mr. MITCHELL. I do not see the letter itself. You are quoting only a portion.

Mr. WALLACE. We were just quoting from the letter. It was too voluminous for me to quote the whole thing. We quote from the letter.

Mr. MITCHELL. In your testimony you indicated that "We retained one of the most respectable, knowledgeable, and effective defense lawyers on white collar crime. We quote from a letter from Mr. Stanley, who was with the Attorney General's Office."

Mr. WALLACE. No; Mr. Stanley Arkin.

Mr. MITCHELL. Oh, Mr. Arkin.

That he sent to you?

Mr. WALLACE. That he sent to me.

Mr. MITCHELL. That it says, "Enclosed is a letter from the U.S. attorney attesting to the fact that the investigation of you and your company has been terminated in our favor."

Mr. WALLACE. Yes.

Mr. MITCHELL. Wait a minute.

"The reason for this is simply that there was no evidence of criminal conduct on your part or that of your company."

Can you remember what date that letter was received?

Mr. WALLACE. I believe in February of this year. I do not know exactly.

Mr. MITCHELL. As I understand it, the investigation went on for about 5½ years.

Mr. WALLACE. Yes. 5½ years.

Mr. MITCHELL. Did you have to pay for your own attorney's fees?

Mr. WALLACE. My attorney's fees cost me both on the civil side and the criminal side for this totally outrageous investigation was over $750,000.

Mr. MITCHELL. Your attorney's fees?

Mr. WALLACE. Yes.

Mr. MITCHELL. That was over 5½ years?

Mr. WALLACE. Over 5½ years?

Mr. MITCHELL. Is there a civil matter? You referred to that.

Mr. WALLACE. The civil matter is still pending in two courts.

Mr. MITCHELL. Perhaps we should not speak to that issue at all.

Mr. WALLACE. No, I will not speak to that issue at all.

Mr. MITCHELL. Because it is a matter before the courts.

Mr. WALLACE. Right. I did not relate to it at all.

Mr. MITCHELL. I am sorry to interrupt you.

Mr. WALLACE. Please.

Mr. MITCHELL. But I wanted to try to make it clear what is going on. Please continue with the balance of your statement.

Mr. WALLACE. The atrocities that happened to me as a minority are widespread in SBA. It may not be as devastating, and it may not cost as much money, but all blacks in the program are subject to the same kind of mistreatment. That is why it is so important for this bill to go through, so that it can eliminate or try to eliminate some of the broad discretionary powers that SBA will take. When you do something that they do not like, they want to get you, as the old saying is.

As you see, it was so devastating. If it had not been for the former SBA employees who came to my aid and told the truth;

they said that they just could not take this any more; they volunteered. We have part of their affidavits in my testimony here. And we have a complete set of them, if anybody cares to have it.

They said that they just could not take it any more. They came over and told the truth the minute that they exited SBA. Now there are a lot of people in SBA who want to tell the truth, but they have to be put under oath, that is what we are going to try to do for the whole truth to come out. I was too successful for the program in major oil. This is why this is so important for this bill. We do not have any problems about other minorities entering into the program, I mean I spent more of my cash money helping minorities into the 8(a) program than SBA did itself.

We have no problem with that. I went out and got them. I gave them my installations, and so forth, to make sure that they make it. I made sure that banks did not take minority's trucks and things, and literally cussed them out about it.

It is not the problem that we want to stay on, and keep other people from entering the program. It should be done in an orderly fashion where you can deal with it as it comes into experts. I do not think that there is one 8(a) who does not want to get off the program as fast as they can, because of the harassment that SBA puts on you during the time that you are in the program.

If you do something that they do not want, they get you out by not getting the proper price. They will not give you your money on time. There are many ways that they can harass you in the program. So we have got to have a bill or something to make sure that this does not happen in the program. This bill is the actual bill that will really take care of it.

[Mr. Wallace's prepared statement follows:]

PREPARED STATEMENT OF CHARLES WALLACE, PRESIDENT, WALLACE & WALLACE, INC.

Mr. Chairman and members of the subcommittee I wish to thank you for letting me testify on the problems of SBA and Government abuses that bill H.R.863 will eliminate.

There was a time when our government and the public was deeply concerned over the economical plight of a segment of its people, so called minorities. Under the Nixon administration, there was a concerted effort to help bring minorities who qualified and had the ambition, into the economical mainstream of this great country. This dynamic effort was concentrated in the Small Business Administration (SBA), through its 8(a) program. It would have a similar effect as the Marshall Plan that economically liberated Europe.

This concerted effort was highlighted and accelerated because of severe criticism by the public, Congress and the White House who wanted to have a successful program that would bring as many minorities into the economical mainstream of this country as possible.

This was during a period of Black unrest and discussion about separatism, because we were not accepted into the economical system. For various reasons, I was chosen to spearhead the efforts as an 8(a) recipient to prove that minorities could work within the system and especially with our government through SBA. The government would use me as that example.

Perhaps because of my undying devotion and belief that Blacks must play a dominant role in helping to create jobs for its people, I was one of the first five 8(a) recipients in Region II and the first in oil to benefit from such programs. A life long Republican, I was appoached by my government through SBA to spearhead this effort,

which I gladly accepted for both my benefit and the benefit of my people. I agreed to do the following:

1. to get as many minorities into the 8(a) program specifically oil, as possible.
2. to confidentially approve certification of every oil company that entered the program.
3. to assist them in delivering oil if necessary, and get their allocations for oil through Mobil, during the allocation period, (Mobil fully cooperated).
4. to extend credit, using my funds or SBA's advanced funds if necessary.
5. I would not buy stock, nor my immediate family in any minority company that received certification in the 8(a) program.
6. I would not receive any monetary value for consulting or any other assistance given to get minorities into the economical mainstream.
7. be a spokesman for the government effort and for the 8(a) program.

For this effort in assistng the government, the government agreed to take the following actions in order to spearhead my company, into the Fortune 500, through a grass root refinery that would create massive jobs for my people, 3,500 contstruction, 16,000 permanent jobs direct and indirect. To accomplish this, SBA unconditionally agreed to do the following:

1. set aside profitable contracts
2. guarantee profit through Business Development Expense (BDE), if necessary.
3. lease or make available excess government equipment for the refinery, our joing venture
4. make available a certain amount of BDE for the joint venture minimal ten million dollars

5. and do whatever was necessary for Wallace to have enough equity to get the project financed through private institutions with the participation of other Federal agencies

At the outset of our agreement, I put total reliance in my government through SBA; and had faith, that if I did my part the Government would keep its word and do its part in accordance to our underlying agreement.

I never believed that political/bureaucratic influences would be brought to bare to stop or alter basic agreements which from the beginning by its nature was a long term bipartisan project.

These influences were brought to bare by the Carter Administration. We quote from affidavit of representative Alvin Holmes of Alabama,

> **"During the Carter Administration I personally called Mrs. Bonnie Mitchell who was administrative assistant to President Jimmy Carter and spoke with her of the problems that Charles Wallace and his company, Wallace and Wallace Chemical & Oil Corp., were having with the Carter Administration. To the best of my recollection she said in essence that the reason that the Wallace project had gotten any help from the Carter Administration in her office was that Charles Wallace was a Republican and their records actually reflected that he had contributed to the Nixon Presidential campaign. She gave me no hope whatsoever that the Carter Administraton would aid Wallace and Wallace Chemical & Oil Corp., the main reason stated above"**

I am still trying to get an answer as to why this Administration is blocking the efforts of a Black Republican who is trying to create massive jobs for his people, in a depression. I wish to point out to this committe so there will be no misinterpretations

of the reason why the order was given to withdraw from **the joint venture forewith.** Not because I was a card carrying contributing Black Republican, if that were the case, this Administration would be bending over backwards to continue the joint venture. But to the contrary, this Administration is viciously continuing to carry out the orders of the Carter Administration. So the answer is not my political affiliation; **it is my blackness and institutional economical racism.**

This country is not willing to let a Black owned family business generate the amount of money, prestige and political power that would be generated from the joint venture (a grassroot refinery), in the face of protest from Major Oil and institutional economical racism. The Administrations attitude is having very severe adverse effects on my ability to stay in business. "I still believe I will be successful, despite a conspiracy to remove me from the oil business."

It is my reading and understanding of the intent, effect and purpose of House Bill H.R.863 that its provision would prevent the recurrence of the conspirators activity both in political and beaurocratic areas which have been used against my operation, and other 8(a) recipients.

When SBA began to renege on its commitment to the **joint venture**, given the complexities and sophistication of a grassroot refinery, and the lack of SBA's knowledge in this field, I beieve that it was just a misunderstanding and the Government's committment would be valid with the support of the experts in this field. These experts came to my aid to certify the feasibility of the project and its job creating ability to no avail.

It is my belief based on this action early in the Carter Administration that a political decision was made to **abort Wallace's dreams** an order was issued to systematically withdraw any support from the **joint venture.** In the initial stages I could not believe that my government would go back on its agreement. We attempted to

cooperate with SBA, but it became apparent that they were not acting in good faith and I protested to the SBA for misusing government agencies, embarking on a conspiracy to destroy the project, in particular an order that was given which made the Department of Commerece renege on a committment for the first phase of the **joint venture** which would have been financed by an agency other than SBA, for the expressed purpose of covering up their own errors and protecting themselves from any criticism from the public, political sources and Major Oil (my competitors).

With documents in SBA's files which prove the existence and participation in the joint venture, they knowingly lied about the joint venture by denying its existence and in order to cover up they demanded return of money used in the joint venture. They used legal action to deny that there was any documentation on the joint venture, and attempted to destroy such documents, "I was informed".

It is important for this committee to understand how necessary and important this bill is to be made into law for the survival of the program, and to protect citizens from goverment agencies such as SBA. When it violates the intent of Congress and its laws by using a cover up. Remember, SBA denyed any participation or knowledge of the **joint venture** to all concerned. We quote from government document concerning the joint venture.

> **"Everything done for Mr. Wallace is on a precedent setting or exception basis. Much can be justified in our advocacy role for small minority owned businesses, particularly one trying to build a refinery, improve the nation's energy reserves, hire 5,000 employees in a poverty stricken area of Alabama, and build a town of 25,000.**
>
> **However, as we look to the "big picture" to justify those exceptions for Mr. Wallace, Mr. Bass is told to narrowly limit his view of Mr. Wallace's financing precedures. It would**

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> **However, as we look to the "big picture" to justify those exceptions for Mr. Wallace, Mr. Bass is told to narrowly limit his view of Mr. Wallace's financing precedures. It would**

appear that we may be financing Mr. Wallace's enterprises more than is: (1) generally recognized and/or (2) possibly authorized.

It is my strong opinion that this is becoming too big for one region or even one agency to handle. Strict adherence to our rules or within another agency could abort Mr. Wallace's dream. Perhaps, it should be aborted, but it seems to me something we would all like see happen.

The almost $20 million we're giving him is enough to get us all in serious trouble but not really enough to get him started. He needs close to $600 million! But, he's delinquent on $67,000 and in default on part of over $13 million in advance payments for one or two years! Saint or Sinner? Does he have a chance at the $600 million and should an inter-agency task force help him, or should we cut our losses and his dream?"

The SBA took the position expressed in the media by Ms. Patricia Cloherty, former Deputy Administrator, we quote similar language from a news article.

"SBA is not in the business of making Exxons out of minorities. We are in the business to assist "Mom and Pop" stores."

This was the SBA's attitude about the joint venture after being pressured by my competitor, Major Oil, for political expedience.

Wallace and his companies were criminally investigated for misuses of government monies, SBA thought they had documents in their files that clearly pointed out Wallace could not have criminally misused the Government money. We quote from an official legal opinion,

That advance funds once it has been placed in a joint account was no longer government money, (public money) and there is no way that I could criminally spend said monies, joint venture or not. We quote from governments official documents, "You suggested that advance payments to an 8(a) subcontractor deposited in a special banking account constitute "public money" within the mearning of part 202.1 of the Treasury Department Regulation (31 CFR Part 202) and that banks in which such "speical bank accounts" are maintained may be required to collaterize" funds therein. You indicate that you have discussed this issue informally with an attorney in the Office of the General Counsel Department of the Treasury, who agrees.

We are completely unable to agree with such opinion. It is clear from the foregoing provisions that advance payments are made "to" the 8(a) subcontractor. It is clear beyond peradventure that the Government's interest in the funds in the speical bank account (which also may include payments made to the 8(a) subcontractor for partial completion of performance) use solely in the form of a lien thereon to assure repayment of a special bank account established pursuant to the above provisions are not "public money" and, therefore, are not subject to any collaterlization requirement under 12 U.S.C. 265. This fact was hidden then and now from investgating authorities, (made public by Plaintiff)."

However, my government (SBA) neglected to inform me that this effort would be good only as long as it was popular to assist minorities. Otherwise, it reminds me of a popular televsion show, "Mission Impossible". "If any of your competitors do not approve and it is not in the political expedience to help minorities, the Administrator will deny any involement in this project." There are memos in SBA's files that may

have been destroyed, we quote from a government document that mentions such memos, that confirms SBA's involvement in the joint venture that was building a grassroots refinery in Tuskegee, Alabama.

I personally received phone calls informing me that an order was given to destroy all incriminating evidence in said file through an anonymous phone call from SBA. The fact that such evidence that was or is in the file is a substantiated by a memo prepared by Paul Browne to Mr. William Clement, for Mr. Willian Mark and Mr. Weaver, we quote from that SBA official memo.

> **"In 1974 W&W began the acquisition and construction of a major oil refinery in Tuskegee, Alabama. The estimated cost for this refinery is approximately $650 million. We believe the Tuskegee Project has siphoned off extensive corporate resources. The Arthur Young Company's audit of December 31, 1978, shows an investment by WWE of $7,925,477 in Tuskegee. WWE is underthe assumption that SBA and the Federal Governmen would actively assist in the development of this project. Several memos in the file substantiate this agency's intent to assist WWE in this Endeavor."**

All three adminsitrators, (Mr. Weaver, Mr. Cardenus and Mr. Sanders lied to other Federal agencies, the Hill, the White House and the Public or refused totell the truth to protect one another and solidify the cover up, denying that there was any effort toward the joint venture by SBA and its officials. We quote or the same SBA official memo.

> **"In spite of earlier efforts and commitments to assist WW with the refinery project, SBA does not have the resources to bring acout a viable venture of the refinery."**

After it became apparent that SBA wanted no part of the joint venture I thought they wanted to gracefully back out. We foolishly agreed to pay the money back through a Wallace approved business plan referred to as the "work out plan". Not knowing that my government (SBA) had no intention of living up to such a plan. Further orders had been given to financially destroy Wallace, by not living up to the "work out plan", because SBA was afraid that if the money was paid back through the "work out plan", the refinery may be built and that would not be in the best interest of the powers to be.

Totally fearful of the unwarranted criminal investigation knowing I could be indicted soley because accused, my wife and I were coerced into signing a note personally and otherwise which made us responsible to pay the money back through "the work out plan". Then SBA official lied and made misleading statements insisting that monies had to paid back regardless of whether I received such assistance or not. They constructed the note in a fashion through neglect on the part of my attorneys so that if you did not read both documents, it would appear that SBA had an unconditional note that was solely the responsibility of Wallace. SBA in taking such action knew full well that without impliminting the "work out plan" there was not a remote chance, that the money could be paid back in a timely manner without the refinery being in operation. The Regional Administrator who signed the note expressed his concern about the double cross and cover up. We knew that we had to be insane to agree to such an agreement but we thought that perhaps SBA would live up to its part of the agreement and the criminal investigation would no longer exist. We quote from SBA member Mr. Israzary Former Regional Director-II,

> **"Additionally, it is my opinion, that the agency made a moral in not a legal commitment to assist Wallace in the financing of these additional contracts, if he is unable to obtain financing from commercial sources. The Treasure Department "line of credit" financing was the vehicle discussed with**

> **Wallace that would be most appropriate or these above reference contracts. It is now my understanding from Bill Stephens, Deputy Director, OBD, that this financing method is presently available, if and when a decision is made to utilize it in the Wallace case."**

To explain to this distinguished committee and the world that SBA's sole purpose was to destroy the financial monster that they had created on behalf of my competitors, Major oil. The "debt structure agreement" and the "work out plan", was a sham and device to destroy me.

It is my opinion that the SBA official who have denyed that the note was a conditional not predicated on the "work out plan" (my approved business plan) have perjured themselves under oath or taken fraudulent actions by signing a note without having assurance that there was a reasonable and equitable way to repay, I relied on the "work out plan"

Even when I foolishly agreed to pay the money back, SBA continued its vendetta in order to prevent the money from being paid back. To make sure I would default on the "debt structure agreement", they systematically began to take my profitable installations away. This effort was so intense, by SBA's Washington office that they wouldn't explain it to the New York SBA officials. We quote from an official memo from the Regional counsel, Mr. Jack Matthews,

> **"The restoring of the three stops that were taken from Wallace & Wallace. This is a difficult issue, which most of us find out about after the fact, I have never had a satisfactory explanation why it was done, but now it has been done and the stops have been assigned to other contractors, there appears to be little that can be done to restore them to Wallace and Wallace."**

To continue its vendetta to destroy me financially, SBA willingly and knowingly violated the "debt structure agreement" or the sole purpose of creating a default. I bitterly complained of SBA's unwillingness to obey the "debt structure agreement", again we quote from official government (SBA0 memo for the Regional Counsel,

> **"Wallace claims SBA has violated the spirit of the agreement in some cases and the agreement itself in not providing adequate of the ground fuel contract. I agree."**

As SBA continued its harassment of Wallace and abuse of its broad power to put Wallace out of business, they sued on the note using narrow legal technicality in violation of the spirit and intent of the over all agreement and was able to obtain a summary judgment (which has been appealed and will go to the Supreme Court if necessary). Heeding the law that a summary judgment can only be granted i there is no issue of facts. The whoe country is at a loss and dumbfounded. How can SBA ask for a summary judgment when SBA and Wallace were in joint venture? Not only would SBA cause Wallace's demise by getting a summary judgment, they did everything in their power to get Wallace indicted on accusations that were false and without merit. They might have succeeded if former government employees hadn't volunteered and given affidivits, that proved the joint venture confirming my statement and position. It is my opinion that these courageous men should receive the highest civillian award that this country can bestow on humanity. They flatly refused to let their former agencies and employers destroy a Black man whose only crime was to be poor, Black, ambitious, and trying to help relieve the economical misery of his people through meaningful jobs in one of the poorest counties in this country, (Macon County Alabama). we quote from affidavits of these courageous human beings who willingly volunteered to tell the truth.

(1) Mr. William L McElroy former Attorney in the Office of General Counsel Small Business Administration, Washington, D.C. states,

"It was common knowledge among SBA personnel that the excess GSA governement property was to be provided by SBA to a non 8(a) concern, to-wit Wallace and Wallace Chemical and Oil Company (which was owned by Charles Wallace) for use in connection with the construction of the oil refinery at Tuskegee, Alabame. It was further well known by SBA Personnel that this was part of SBA's overall plan of total assistance (financial, 8(a) contracts, advance payments, etc to Charles Wallace in his efforts to build the oil refinery thereby providing employment opportunities for his people."

(2) Mr, Winford Smith former Director, Office of Business Development states,

"In recongnition of Wallace's inability to generate adequate equity funds to finance the refinery project and in order to assure its success as a demonstration project, it is known by the undersigned that SBA was an active financial participant in the Refinery Project."

(3) Mr. Paul Browne former Director of the Office of Business Development of the Small Business Administration in Washington, D.C. states,

"as specifically set forth in the written report that there was clearly shown knowledge of and intent, demonstrable from the documents and actions of officials of the SBA through an extended period of time, to be involved in and assist Wallace & Wallace in the development of the Refinery Porject."

(4) Mr. Tymothy Kennedy former Small Business Developoment Officer states,

"It was generally known in the Boston SBA Regional Office and known by the undersigned that SBA viewed the Refinery Project joint venture as a prime example of the cooperative efforts of the federal government and minority business enterprise and that SBA had full knowledge of, participated in, and partially funded the Refinery Project."

(5) Mr. Vernon McGhee former Attorney-Advisor stated,

"It was generally known in the San Francisco SBA Regional Office and known to the undersigned that the Refinery Project was a joint venture arrangement between (a) SBA and (b) Wallace & Wallace Fuel Oil Company and Wallace & Wallace Chemical & Oil Corp."

(6) Mr. Clarence Chandler, former General Business and Industry Specialist stated,

"Wallace had a significant Advance Funds balance at the end of the 1975-1976 year. SBA continued its joint venture commitment to the Refinery Project."

(7) Mr. Richard E Barber, former Regional Administrator of the Small Business Administration (SBA) for Region III in Philadelphia, PA states,

"Prior to my joining SBA and during my tenure there were public news reports in newspapers and magazines relative to the Refinery Project in Tuskegee, AL involving the Wallace and Wallace Oil Company and the SBA."

After a long, devastating costly, criminal investgation with no merit whatsoever, I was informed that the investigation was closed, and thanks to these couregeous men,

I was exonerated. We received a letter from the Honorable John S. Martin, Jr., Attorney for the Southern District of New York. We quote from his letter,

> **"As you have previously been advised, this Office, in conjunction with a grand jury empanelled in this District, has been investigating allegations concerning your client Charles Wallace. As you know, the principal function of this Office in such an investigation is to determine whether there is sufficient evidence available to prove criminal charges to the satisfaction of a jusy beyond a reasonable doubt.**
>
> **I am writing at your request to confirm that the investigation is now complete as to Mr. Wallace, that he is no longer under investigation, and that we do not intend to seek charges against him."**

We retained one of the most repectable, knowledgeable and effective defense lawyers on "white collar crime" from the firm of Arkin , Arisohn in this country. We quote from a letter from Mr. Stanley S. Arkin,

> **"Enclosed is a letter from the U.S. Attorney attesting to the fact that the investigation of you and your company has been terminated in your favor. The reason for this is simply that there was no evidence of criminal conduct on your part of that of your company."**

Outrage was felt throughout the community by those who were not afraid to speak out against the establishment such as the Honorable Parren J. Mitchell, Chairman of the Small Business Committee. We quote from one of his official news releases,

> **"The Maryland Congressman was especially critical of the Small Business Administration. "It is my firm belief", he**

stated "that S.B.A. imposed certain contractual requirements on Wallace and Wallace with the full knowledge that those requirements in and of themselves almost guaranteed that the oil refinery would not succeed."

The outrage over the mistreatment of the second largest Black Business in America and the dilatory tactics that were used to prevent Wallace from having its "day in court" prompted the following organizations, under the heading of Civil Rights Economic Coalition; NAACP, Southern Christian Leadership Conference, Operation Push, The Black Mayors Conference of America and The Congressional Black Caucus to bring these atrocities to the attention of President Reagan in a letter. We quote from the letter,

> "As you may know, the United States District Court granted the Government's summary fudgment motion; thus, the Court did not have the opportunity to consider in open trial certain pertinent facts relatng the activities of SBA in connection with Wallace. It can be argued, therefore, that Wallace has not had its "day in court". We have been commited, however, to ensure that Wallace's legal rights are fully protected, and to that end, we have previously joined Wallace as named plaintiffs in another legal action involving SBA."
>
> "We perceive that SBA has and is systematically and maliciously violating the civil right and economic liberties of one of this country's largest Black enterprises. The litany of circumstances suggestive of the SBA's carefully contrived intent to destroy and punish Wallace is substantial. We understand that SBA (a) assiduously attempted to interfere in several Wallace contracts, and (b) proposed to place

unconscionable restraints on the conduct of Wallace's business. As a result of the summary judgment action, these circumstances could not be fully evaluated by the Court."

"The Seriousness of the Government's willful and knowing particiaption in the possible demise of a substantial Black business cannot be overstated. This period of economic crisis requires creative responses, not petty punitive acts."

This Administration totally ignored the plea of this prestigious coalition. It is ironic that this administration is complaining that the program has not had any successes of graduations. The very policy that is being implemented at SBA is the cause of the dilemma.

SBA and this Administration are looking for a body count rather than lasting successes in the program as is intended by congress. All of the studies that have been made public comparing the odds of the success of minority business verses white and especially a report done by Chase Manhattan Bank approximately ten years ago reveals that it is ten times harder for a minority to be successful in business, than its white competitors. If that study was redone today, the odds would be double. Yet the SBA would want you to believe that a minority can compete with the white community (their competitors) in a capitalist society in which the following is essential in order to compete, and minorities do not have.

A. capital, no minority has ever had free access to capital from SBA, Home Farmers, Department of Commerece, or any other Federal Agency that makes capital available to minority competitors. The average bank, insurance company or any other financial institution lends money totally on racial lines, (their records are proof of such accusation). This is one of the reasons why Bill H.R. 863 is essential. The 8(a) program

had and still has the opportunity to give minorities access to capital. However, it is being sabotaged from within by the minority competitors to prevent competition by minorities.

B. Most of the companies that 8(a) firms must compete with are publicly held companies with stockholders.

That is why during the time that SBA was seeking my opinion of how to make minority companies able to compete, we suggested that SBA loans be secured by stock in the minorities rather than straight debts.

The SBA maliciously tried to mislead the public, Congrss and the White House, when Mr. Cardenus (the former Administrator) used the assasin's approach and published a hit list of the largest minority firm in gross dollars and length of time on the program, to excite the public which may be totally unaware of the program and its intent. The SBA has carelessly considered all minority businesses as fruit, not comparing apple to apple or oranges to oranges. SBA is well aware of what they are doing. Take my case for instance, I grossed 83 million dollars, right away SBA made an arbitrary decision that I should not be on the program any more that I could compete. With what? My chosen business is the oil business certified by SBA. For SBA to compare whether I am small or large, the criteria should only be measured by those that I am competing with. SBA and this Administration have taken the attitude that an 8(a) minority can only gross a certain amount of money regardless of the profit and who he is competing with. When and if SBA compares me with my competitors, then I am virtually unmeasured on any chart.

This bill will help some of abuses in the exercise and misuse of government power of which the following is an example:

Mr. Cardenus in a blatant effort to discredit Wallace, and others, with the skill of a ghetto number runner, dispatched his numbers to the White House, the Hill and to the public. We quote,

"a total compilation of taxpayers funds for assistance provided the company is as follows: Wallace received $113.347.000 8(a) sole source contracts,

Carefully not explaining that this was what the government had to spend for a service whether it will go to my company or not also, he did not take into consideration whether there was profit or not made on the contract.

2. he further stated,

" $2806.00 business development expense (grant funds)

carefully concealing the fact that this was an allocated amount and Wallace did not receive the amount allocated. The amount that Wallace received was a pass through or a subsidy to the Defense Department. We bitterly complained the BDE should be used for tangible items instead of price subsidy.

3. he stated,

" $18,564,000 advance payments (contract financing to be repaid)."

carefully ignoring the fact that Wallace never requested or needed advanced funding until SBA and I were deeply involved in the joint venture, (see excerpts from affidavits from government employees of the existence of the joint venture).

4. he further states,

"$5000.00 government furnished equipment excess"

again carefully eluding the fact that 85% of the government equipment was classified 4R (which means the equipment was too old for government use of the cost would not be justified, otherwise junk). Also not mentioning that I used my skill and ability and several millions of dollars of my funds and advanced funds (agreed to by SBA) to transport, rehabilitate, and secure government equipment.

5. he stated,

"that the government spent $100,220 for consulting for Wallace."

I was informed this consultant was a friend of deputy William Mark. To the best of my recollection, he never came to my office, never made a report, or did any work that was significant on behalf of my company. This is a good example of how the whites get the money and the niggers get the blame.

6. He stated,

"that $37,500 was spent on law firm consultant".

This is truly a misuse of the number game. SBA felt that it should obtain outside counsel to structure the "debt structure agreement". I paid my lawyers and they paid theirs, their lawyers did a better job for them, than mine did for me.

I am dumbfounded and at a total loss to understand the rationale that has been given, that certain 8(a) firms must exit the program in order for others to enter regardless of their ability to be competitive in their particular field. This is sheer nonsense and in direct conflict with the intent of the program, and contrary to every study that has been made on the length of time that it takes a business to firmly succeed in this capitalist society.

If the administration's theory was with merits then minorities would be the most successful business people in America. If the administration wanted to get more minorites into the program they would simply expand the opportunities in such programs. There is no danger of minorities exceeding our fair share of the government procurement. I have no qualms about graduation. In reading this statement and analyzing the abuses and misuses of the government's broad discretionary powers and their attempt to administrate the program as if it was a welfare program rather than a business.

I am quite sure that ever 8(a) recipient would like to be competitive and exit from the program as soon as possible. Some of us will and some of us won't. A program to help is a program regardless of its name. Let us deal with facts rather

than rhetoric. The fact is, if some of us are arbitrarily pushed off of the program we will not survive just as if many survive without government contracts, there are many sole source companies that totally depend on government business. If the government would cease to do business with Chrysler, Grumman, General Dynamics and a host of others I can assure you that they would have as equally hard a time of surviving than any 8(a) firms that is actively participating in the Program today. Let mention to the administration what these companies have that minority businesses have never enjoyed.

A. longevity.

B. years of experience

C. bank relationships

D. stockholders' monies

E. borrowing money at the lowest possible rate

F. full time lobbiest

G. expensive advertising

H. total trust by the community

I. sufficient working capital

With all of the above, without the government's support by actual buying from these companies on favorable terms such as cost plus and negotiated contracts, 40% of the basic companies in America including those in the Fortune 500 would cease to operate profitably and a good deal of them wouldn't operate at all.

Yet this administration would have you believe that a minority could survive with none of the above without government help, can enter and exit a program within five to ten years. It is contrary to every report, every study that I know of and to common sense.

The abuses and abritrary actions which I have described above have been devastating to my business. If not for the continuing loyalty and steadfast support of dedicated groups that not only stood by me, but have joined the law suit against SBA

for violating my civil rights: NAACP, Operation Push, Southern Christian Leadership Conference and Concerned Citizens for Minority Businesses and others.

No one can doubt the sincerity, steadfastness and devotion to the project exhibited by the Honorable Johnny Ford, the Mayor of Tuskegee AL. and President of The Black Mayors Conference of America.

There is no question in my mind if the prestigious law firm of Bustamante, Donohoe, Palmisano, Co., had not come to my aid and especially Carter Donohoe and Edward Coaxum who had faith in me during the height of the conspiracy, I would not have survived the awesome onslaught brought on by SBA and competitive Major Oil.

If it hadn't been for the undying loyality and determination of the prestigious law firm of Gallion and Gallion we would have not survived all of the obstacles facing us in the state of Alabama.

Furthermore, I want to state that I shall forever be in debt, to John Bustamante and First Bank National Association of Cleveland Ohio which came to my aid at a time when all other sources were closed to me only because I was Black and ambitious and who steadfastly supported me, and at the present time, stand ready to do its best to help me to solve this problem with the SBA once and for all.

Thanks to the Black community who stood by me as they did Mayor Washington in Chicago and to the congressional people who also stood by me in this crisis.

I wish to take this opportunity to thank the committee, and its chairman for giving me the opportunity to share the nightmare that I have experienced with a Federal Agency in hope that Bill H.R.863 will become law. To help prevent similar atrocities by SBA.

I hope we all remember the only difference between our government and theirs, is we have a right to accuse.

Mr. MITCHELL. Thank you. I have a number of questions that I want to put to you. I apologize for interrupting, but what I would like to do is hear the other witnesses, and then I will come back for questions.

Mr. DAUB. Mr. Chairman, I will be back. I have read Mr. Barrett's testimony and Mr. Ramsey's testimony, so I have in mind your concerns. I think that the chairman will ably spread on the record those additional questions which will come to mind. Forgive me for having to leave. I will be back shortly, Mr. Chairman.

Mr. MITCHELL. Thank you.

Mr. Barrett, without objection, your entire statement is submitted for the record. It will appear as you gave it to us in the printed record of this hearing.

I am glad to see you again. I hope that your business is doing well in Baltimore. I believe that it is. If you would just give us the 10 or 12 major points that you wanted to make, we would be appreciative.

TESTIMONY OF FREDERICK E. BARRETT, PRESIDENT, UNITED SOUNDS OF AMERICA, INC.

Mr. BARRETT. Good morning, Mr. Chairman and distinguished members of this committee, as a former high-level Federal employee, the first Executive Director of the U.S. Consumer Products Safety Commission, and as a private businessman heading a firm that developed the world's finest FM receiver, and in view of our company's long experience in urban business development, I feel particularly qualified to comment on the vital issues to be discussed during these oversight hearings.

The first exhibit that I would like to bring to your attention is a letter from the President of the United States, which appears as exhibit 1 in my testimony. In this letter dated January 13, 1983, the President has conveyed to me the desire that our company should be successful. The President also has been grateful to us that we have awarded one of the products to these people of the United States as a gesture of the assistance that we have received from the Government, and from the SBA in getting started.

However, having headed a regulatory agency, I am keenly aware of the safeguards and human rights provided by the Constitution of the United States. I would like to place particular emphasis on the fundamental need for due process to be followed in any regulatory action, and any impact of Government instrumentalities on the lives of American citizens.

This concept of due process was initiated to protect all U.S. citizens against the improper and irrational actions of tyrants, despots, and bureaucrats. As president of United Sounds of America, I appear before you today to arouse your interest in what has become a complicated, and I think a very inspirational saga of me and my several companies.

We began our business in 1968 with $3,000 in equity. By 1973, we had close to $4 million in sales. Because of this and the achievements in the technological society, I was summoned to serve as head of a new agency in Washington.

It was my belief then, as it is now, that to serve one's Nation in a public spirit and attempt at national good is a duty as well as an expression of public commitment. I left behind my company in blind trust, as was required for acceptance of that job.

The SBA in an arbitrary and capricious manner ruled that I was no longer eligible for contract support because of my governmental duties. At that time, there was no policy nor no regulations for day to day activities as a prerequisite for receiving contractual aid.

Without due process protection—and I emphasize without due process protection—our company's contractual support on 8(a) was unduly withdrawn. Unabashed expressions of what used to be veiled political emotions now prevail.

Now the 8(a) contractual support was the major source of our income, and subsequently we were not able to make payments on our SBA loan. We brought this matter to the attention of the administration. The White House gave us a letter which is enclosure 5 to my document.

That letter was brought to the SBA, and certain plans were underway to resuscitate our companies. We took that letter to the regional office along with the plans. The regional office told us that the National Office's plans were not worth the paper on which they were printed, and that we would have to deal directly with him, the Assistant Regional Director, on terms of his own choosing.

The matter languished for many years as our efforts to reorganize ourselves were pigeonholed by the bureaucrats in the regional office. In 1976, a new administration was elected, and again the matter was brought to their attention.

Nothing was done about our situation. However, neglect began to take its toll. The company's operation suffered. As a result, our company was targeted—and I underline the word targeted—through the combined efforts of the SBA regional office, the Justice Department, the U.S. Attorney's Office in New York for intensive investigation into the delinquency of the SBA loan previously mentioned.

Once again without due process, and against SBA's own regulations, and with no opportunity for administrative review until this date, our plant and businesses were closed. The SBA seized all funds in our company's bank account, terminated all work in process, dissolved contracts, confiscated property, and disposed of it by auction at distressed prices amounting to only a fraction of the property's book value.

Stringent sanctions were imposed without the benefit of review or hearing. Now the implication of this is serious. No citizen on U.S. property can be safe in this democracy, if the Government itself decides to unilaterally impose sanctions without the fairness of the hearing process.

In spite of the SBA's problems with us, and the nightmare that we experienced, we were undaunted. We have started another company in Baltimore to rebuild the business that we desired.

Unfortunately, SBA sought through the courts in New York in case 79-CV-974 to obtain a summary judgment without hearing the issues or the merits, and to further persuade the courts—now this is extraordinary—to reach beyond the matter of the indebtedness, and to dismiss all of our claims with prejudice without being

examined, which means that the matter could never, never be heard or tried in the courts to acknowledge our claim for a hearing, or to receive substantive justice and elementary due process.

Additional pressures are continuing to be exerted, in that attempts to obtain financing for our new company have been thwarted by SBA efforts. Whenever SBA has called, they give us a very bad report, and this in turn turns off the capitalists who are trying to finance our new company.

This is tantamount to really holding us hostage. They do not want this matter to be heard in public. For this reason, I have asked the Congress here as well as the people of America through the media to be able to look into this matter, and delve into its depths and to see that due process is afforded every citizen of the United States.

The situation has reached critical stages. Our companies are barely surviving. Our produce is being maintained in a marketplace against all odds, at the pinnacle of its international reputation, and at extraordinary costs.

We welcome this opportunity to speak before this Subcommittee on SBA and SBIC Authority to alert our Representatives, and the people of the United States to our situation. We very well may go under because of the discretionary decisions of the SBA bureaucrats, and the action and ignorance of their political superiors.

On behalf of the U.S. citizens, I ask Congress to investigate and plumb this matter to its greatest depths. It is time to focus on the true issues at hand. The Government and the SBA have a responsibility not to harm individuals. When it does, it also has a responsibility to redress that grievance. I humbly beseech Congress and the Nation to grant relief for the good of all people.

Thank you, very much, Mr. Chairman. I am now open to any questions.

[Mr. Barrett's prepared statement with attachments follows:]

PREPARED STATEMENT OF FREDERICK E. BARRETT, PRESIDENT, UNITED SOUNDS OF AMERICA, INC.

As it has been and we hope shall continue to be the case when the people of the land are grieved and perplexed, it is our custom to petition our government and prevail on it for help in resolving our legitimate grievances with the instrumentalities of government. The injustices that have from times past plagued all of our people have not vanished from the land: but they have translated to a higher level and a greater intensity. What we bring before you today is a case study that demonstrates the Small Business Administration's capricious and abusive exercise of authority in clear violation of the applicable federal statutes.

Credentials

As a former high level federal employee, the first Executive Director of the United States Consumer Product Safety Commission, and as a private businessman heading a firm that developed the world's finest FM tuner and in view of our companies' long experience in urban business development, I feel particularly qualified to comment on the vital issue to be discussed during these oversight hearings.

I would like to introduce as our first Exhibit (Exhibit 1) a letter from the President of the United States of America. It is apparent that the goals of the President and our goals are convergent at a common point, to build successful businesses that create jobs within our urban areas.

Having headed a regulatory agency I am keenly aware of the safeguards of human rights provided by the Constitution of the United States. I would place particular emphasis on the fundamental need for 'due process' to be followed in any regulatory action, in any impact of governmental instrumentalities upon the lives of American citizens. This idea of due process was instituted to protect all of us as citizens of the United States, against the improper or irrational actions of tyrants, despots, or even governmental bureaucrats. We must forever be vigilant against any decision-making porcedure carried on outside of public or Congressional scrutiny, because such a habit of action invites bureaucratic irresponsibility and contempt for basic statutory formulations. Contempt for the rule of law. As a former civil servant myself, I am questioning

the awesome power and obstinancy of the entrenched bureaucracy of the Small Business Administration. I am also questioning the basic will of the SBA's politically appointed leadership, to follow through on the verbal formulations of this Administration. Such excess power can not be tolerated in any society, otherwise no one can be free.

Obviously there is a wide variation between the spirit and letter of the law, and the way it is administered. Thus evolves flagarant abuses of due process guaranteed under constitutional law. If such errant behavior is to go unchecked, it will send a strong signal that anarchy is acceptable. At that point, none of us are safe from retaliation and retribution by bureaucrats with personal or political motives. At this time, I respectfully submit to you, how can we survive if this problem continues?

Background and Achievements

In 1968, I started my business with $3,000 in equity, five years later our company became the largest High Technology Minority Company in the United States. Within the first year along, our company sold an impressive 184 units and had firm orders for 850 additional units.

By 1973 we had close to $4 million in sales and our two plants employed over 149 workers many of them unskilled minorities. This venture was productive, profitable and successful, until 1974 when I was forced to lay off 129 workers and sustained a personal loss of half a million dollars. This occurred due to the SBA's arbitrary actions of denying contractual support, which resulted in destroying the cash position of the company and eventually destroying the company itself.

[illegible] know the excrutiating pain of mental torture, the f[illegible] onsilability, the psychic devastation, the s[illegible] adictions of international praise and S.B[illegible] t has been a "cuckoo's nest" experience.

[illegible] le recollections of the following years [illegible] eived the Design Excellence Award from [illegible] esign and Engineering Exhibition in [illegible] e were awarded the coveted "State of [illegible] s leading hi-fi magazine for our Seque[illegible] All other memories are ones that I would rathe[illegible], but are honored to share with you now, for the b[illegible] fit of this subcomittee and the people of the United S[illegible]es.

Situation

As President of United Sounds of America, Inc., I have come before you today to arouse your interest in what is at best a complicated and I still think an inspirational saga of my several companies. We had established our businesses to the extent that they were listed among the top 100 Black companies in the United States in 1973. Our companies also have set the singular distinction of having developed and marketed a product that set an internationally acknowledged standard as the world's finest FM receiver.

Because of this attainment of success and the recognition which this afforded us, I was called to public service to head a new agency that had been created by the 92nd Congress of the United States of America. I served as an official in the Nixon Administration. Attention is called to hearings held before the Subcommittee for Consumers, 94th Congress serial number 94-12 on page 292. (Exhibit 2) I chose not to accept compensation for serving as the first Executive Director of the Consumer Product Safety Commission. It was my belief then, as it is now, that to serve one's nation in a public spirited attempt at national good is a duty as well as an expression of public commitment. Little did I realize that the recognition and call to duty would be the beginning of a protracted nightmare that continues unabated.

I left my company in a blind trust as was required for acceptance of the position. Several SBA officials imposed on me for favors to be granted by virtue of my new federal position. I flatly refused their requests. Thereafter, I began to feel extraordinary pressures. The Small Business Administration, then, in an arbitrary and capricious manner declared that my companies were no longer eligible for set aside 8(a) contracts because of my governmental position (see Exhibit 3 and Fortune article Exhibit 4). At the time the Small Business Administration had no policy on such a regulation for day-to-day activities as a precondition for receiving contractual aid nor was there any reason to view the uncompensated appointment as a conflict of interst. In fact, the SBA's regional director was quoted as saying, "current policy is basically silent on day-to-day business activities, however, this (interpretation) is implied." (See Exhibit 3).

Without due process protections, our companies' contractual support under 8(a) was taken away from us. We did not stand a chance. In a well-remembered military maneuver, the SBA swooped down and bombed us right on the runway, before

we had the opportunity to take off and defend our own Pearl Harbor. Unabashed expression of what used to be veiled, political emotions now prevailed. This 8(a) contractual business was the major source of our income and consequently, we were not able to meet our payment schedule on our SBA loan, which was ironically part of the development cost for our award winning tuner. They are the ones who had withdrawn our authorization to earn money under Section 8(a) contracts. We brought this matter to the attention of the Administration then in the White House, who gave us a letter (Exhibit 5) and promised us help to resuscitate our companies. The letter was then taken to the SBA and some efforts were made to correct the situation. However, those plans which were promised were never forthcoming since we were informed by SBA's assistant regional director that the national office's plans were not worth the paper on which they were written and that we would have to deal directly with him, the assistant regional director, on terms of his own choosing. We have supplied as Exhibit 6 a detailed chronology of events which are of compelling validity and became the basis for a claim to the SBA. God knows we have done everything a responsible business is expected to do. We have exercised the same kinds of judgements, used the same instincts, followed the same principles, employed the same kind of expertise, and made the same kinds of decisions as most other successful businesses have done, and yet we perceive that the response has been somehow different. It makes us wonder if that difference is somehow more visible in our case.

Cause and Effect

The matter lanquished for many years as our efforts to reorganize ourselves were repeatedly pigeonholed by the bureaucrats at the regional office. Bureaucrats do not rule by reason, they rule by dictum. In 1976, a new administration was elected and again the matter was brought to their attention. Nothing was done about our situation, however, and neglect began to take its toll. The companies operations suffered and as a result our firm was targeted through the combined efforts of the SBA regional office, the Department of Justice, and the U.S. Attorney's office in New York, for intensive investigation into the delinquency of the SBA loan previously mentioned. Again without due process and against SBA's own regulations and with no opportunity for administrative review, our plant and business were closed. The SBA seized all funds in the companies' bank accounts, terminated work-in-process, dissolved contracts, seized our property and disposed of it by auction, at distress prices, prices amounting to only a fraction of the property's book value. Businesses

were destroyed, jobs were obliterated, lives were overturned. It was tantamount to a lynching. This terrible tragedy could have been avoided had administrative and substantive due process been properly implemented. Stringent sanctions were imposed without the benefit of review or hearings. The unusual forces of bureaucracy, judged us by much tougher standards, systematically blocked and frustrated our efforts at every turn. Had the SBA provided the questions to the overriding concerns, then perhaps we could avoid this embarassment at present. The courts as well as the SBA have failed to focus on the basic issue, "denial of due process."

In our opinion, the SBA is an administrative agency that in recent years has begun to be operated in a regulatory mode. When the regulatory function supersedes, the function of assistance to small business, elementary checks and balances require the protections of due process. It is imperative, peoples lives are at stake. No citizen, and no citizen's property can be safe in our democracy if the government itself decides to unilaterally impose sanctions without the benefit of public hearings.

In recent years, it has become fashionable to entrap and target individuals as demonstrations of the effectiveness of the regulatory process. We must be reminded, however, that the same government that guarantees us our freedoms under the Constitution can become the same government that takes away our freedom. There must be constant oversight to ensure that the basic principles of our founding fathers are not tinkered with recklessly.

In spite of the SBA and undaunted by the nightmare of the recent past, we have started another company and have set about rebuilding the business that was desired. This time, however, we have done so with a mission to develop this business in the decay of an urban area, utilizing the people from that community to construct a very high technology instrument.

We are proud that we have succeeded in doing this. Within the past year we have built a plant, hired and trained members of the local community and produced our award winning product in thos urban environs. We are also proud that our efforts have been recognized by the President of the United States as expressed in the letter Exhibit 1.

In spite of the President's recognition and the efforts that we are making the Small Business Administration's

obstructive bureaucrats have now adopted another policy, that of concealing the evidence of the excess to which we have been subjected. They have sought further, through the courts in New York City case 79CIV974, to obtain a summary judgment for the amount of the claimed outstanding loan plus interest, and further persuaded the courts to reach beyond the matter of the indebtedness and in an unprecedented and extraordinary move to dismiss all of our claims with prejudice without being examined, which means that the matter could never be heard or tried in the courts to acknowledge our claim for a hearing to receive substantive justice and elementary due process. Additional pressures are continuing to be exerted, in that attempts to obtain financing for our new company have been thwarted by the efforts of the SBA. In addition by their inacton the matter has been grossly and unduly protracted and memories have become blurred.

In order to obtain relief our company engaged in a media blitz. With the SBA's bureaucrats digging their heels as they recognized that the public is vitally concerned with the efficacy of their claimed efforts. Their overt actions have become covert. The media has yet been able to get to the bottom of this latest tactic. On each occasion that the news media asked the SBA to comment, they have refused on the specious grounds that the matter is currently in litigation. In fact, in a recent comment from the central office of the SBA and in a letter received by our company (Exhibit 7) the agency states, "this matter is still under active investigation by this office." Five years of investigation without a charge being made. Simultaneous investigation and news blackout by the SBA is a wanton violation of the right to be free from government harassment, as well as the obligation of governmental instrumentalities to be open to the public and press scrutiny. Surveys and investigations of citizens should not be begun unless "reasonable" suspicion of illegal actions exists, and there should be a "reasonable" termination date if nothing improper is uncovered. Mr. Chairman, I would not be testifying here today if I had anything to hide, I can only wonder what the SBA wants to hide. One can easily come to the conclusion that in our case the law was used as a tool for instituting an illigitimate and unstatutory system of regulation, applying extralegal pressures in defiance of the language of applicable statutes and in total derogation of our substantive and procedural rights to due process of law.

The situation has reached a critical stage. Our companies are barely surviving. Our product has been maintained in the marketplace against all odds at the pinnacle of its

international reputation at extraordinary costs. Our story clearly signals hope for our people and an indication of what the members of minority groups can do in the open free enterprise system if given the opportunity. We welcome this opportunity to speak before this Subcommittee on SBA and SBIC authority to alert our representatives and the people of the United States of our situation. Our story is one that Horatio Alger might have told. Its conclusion, however, is shorn of the sunlight of those tales. We may very well go under because of the discretionary decisions of anonymous Small Business Administration bureaucrats, and the inaction or the ignorance of their political superiors.

Conclusion

I petition this Congress, on behalf of the citizens of the United States of America, to investigate and plumb this matter to its greatest depths. Let the conspiring bureaucrats, as well as the nation, understand that they will be held accountable for their misdeeds and injustices. All it takes for evil ro prevail is for good people to do nothing. It is time to focus on the true issue at hand. The government and SBA has a responsibility not to harm individuals, but when it does it has a responsibility to redress that harm.

At present, I continue to manufacture our fine product and I will evermore continue to do so, it is a symbol of hope for our people and our nation. I humbly beseech Congress to grant relief for the good of the people.

THE WHITE HOUSE

WASHINGTON

January 13, 1983

PERSONAL

Dear Mr. Barrett:

This is to express my sincere thanks to you and your associates at United Sounds of America, Inc., for the stereo FM band tuner which you presented for me at Christmas. I appreciate being remembered with your award-winning Sequerra Model 1. The fact that it comes from the Parks Heights Urban Enterprise Zone which I had the rewarding experience of visiting last summer makes your gift particularly meaningful. You and your colleagues are setting an outstanding example of the fine work that can be accomplished in helping revitalize businesses and create jobs within our nation's depressed areas. I am delighted to share in the results of your company's efforts and commend you for a job well done. I have no doubt that your success will serve as a real source of encouragement to other small companies and an incentive to the Congress to act on my enterprise-zone program. Thank you for helping to make us all proud again of "Made in America."

With my gratitude to you and your staff for your special gesture of friendship, and with my best wishes for the future,

Sincerely,

Ronald Reagan

Mr. Fredrick E. Barrett
President
United Sounds of America, Inc.
3000 Druid Park Drive
Baltimore, Maryland 21215

EXHIBIT 1

Exhibit 2

I want to talk to you about the appointment of your executive director. I want to give you my last question. You have mentioned many times your resistence of White House approval of certain non-career jobs. As a chief executive of a State, my experience has been that someone suffers from this type of encounter. Who suffered in this case? You, the White House, or the employee?

Mr. Simpson. Well, I couldn't speak for the White House. I could speak for me. It's been fairly traumatic. By the way, I might say that it's not solely my decision. That decision was again a policy decision of this Commission. There were four of five who supported that position that we should not have political clearance from the White House; that it was not within the intent of the Congress. I think that the individuals involved certainly have suffered some. I think that's true. It's been a concern to all of us. I think they understand it, though, and I believe if you will talk to the individuals involved——

Senator Ford. I'm talking about one individual. I'm talking about your executive director and I want to limit our conversation to that one individual—the former executive director.

Mr. Simpson. Yes. I think he did suffer.

Senator Ford. What was his name?

Mr. Simpson. Mr. Barrett.

Senator Ford. His first name?

Mr. Simpson. Frederick Barrett.

Senator Ford. Did he give up anything to take the job you offered him?

Mr. Simpson. Yes; he did.

Senator Ford. What was that?

Mr. Simpson. He was a sole owner or principal stockholder of a group of companies in New York City. He took a substantial reduction in pay. He was required to dissociate himself from his companies, et cetera. I think financially and otherwise he suffered.

Senator Ford. What type of business was this?

Mr. Simpson. In electronics. I'm not intimately familiar with it, but it was in the electronics area.

Senator Ford. On what basis did you employ him?

Mr. Simpson. As a consultant. It was the only pay status available to us.

Senator Ford. Did he occupy a continuing full-time job position?

Mr. Simpson. He was not a full-time employee, but he was a consultant and it was interrupted service, but as a consultant, yes, for approximately a little over a year. Interrupted, though.

Senator Ford. I want to read your memo dated December 14, 1973, to all Commission staff from Richard O. Simpson, chairman, and it has your signature by it:

Now was the position of executive director a full-time job?

Subject: Appointment of new Executive Director. I am pleased to inform you that the new executive director, Mr. Frederick E. Barrett, will be officially on-board Monday, December 17, 1973. The announcement of his appointment will be made at noon by the Commissioners during the regular Monday luncheon. I know that you will all find Mr. Barrett to be a most effective and energetic executive director.

Mr. SIMPSON. Well, Senator, the subject of the political clearance and——

Senator FORD. I asked you if the position was a full-time job.

Mr. SIMPSON. Well, we would hope to have it a full-time job. One of those identified under the act.

Senator FORD. Can you give me a yes or no?

Mr. SIMPSON. Mr. Barrett's pay status was as a consultant.

Senator FORD. But what about the position?

Mr. SIMPSON. The position is a full-time job.

Senator FORD. That's what I wanted to hear from you, Mr. Chairman.

Are you aware that the regulations pursuant to section 3109 of title V, United States Code, forbid hiring consultants "to fill a continuing full-time job?"

Mr. SIMPSON. I'm not intimately familiar with it but, yes, I am aware that generally that's true.

Senator FORD. The answer is "Yes."?

Mr. SIMPSON. Yes.

Senator FORD. Was he paid the full amount you agreed to pay him as a consultant?

Mr. SIMPSON. He was paid while he worked as a consultant. He was paid at an equivalent of a grade 18 level but for approximately 5 months while he worked for this Commission he was paid actually nothing, at his request.

Senator FORD. This was his request?

Mr. SIMPSON. Yes, approximately $15,000 that he would have been entitled to he would not take.

Senator FORD. Was he warned before accepting that he might not be paid and that his job would possibly be of short duration?

Mr. SIMPSON. He was told, yes, before he was employed. He was told of the clearance situation or lack of clearance situation with the White House. It was explained. All the Commissioners, myself and the others, were aware of it. It was a job which required a vote of the Commission—a concurrence of the Commission—concurrence of Mr. Barrett was in fact unanimous.

Senator FORD. Was he your recommendation to the Commission?

Mr. SIMPSON. No. As a matter of fact, I believe it was not. I hadn't known Mr. Barrett before he came in for an interview.

Senator FORD. Was this gentleman employed for more than a year?

Mr. SIMPSON. He was a consultant, but his total period of time with the Commission, I think, was approximately a year, but as I say, it was interrupted somewhere in the middle for a period of 4 or 5 months where he had no pay.

Senator FORD. Wasn't it from December 17, 1973, the date of your memorandum, until January 5, 1974?

Mr. SIMPSON. He wasn't in pay status during that period, no, not during all that period. He was volunteering his time, as I mentioned, for 4 or 5 months of that period. He received no pay at all.

[The following information was subsequently received for the record:]

FORTUNE
Two Dollars
November 1977

Junk Aid for Small Business

The Small Business Administration has something for almost everyone. But what its clients really need is less government, not more.

by Aimee L. Morner

When it set up the Small Business Administration in 1953, Congress instructed the new agency to promote "free competitive enterprise" by helping out the small, weak and weakest competitors. And to begin with, that is what the SBA tried to do. It lent money to financially strapped small businesses whose applications for credit had been rejected by banks, procured government contracts for them, and counseled their managers. The agency also came to the aid of businessmen and homeowners hit by natural disasters.

A black G.E.

Sometimes the SBA ends up clobbering the small businessmen it sets out to help through its minority programs. Consider the case of Frederick L. Barrett, a bright, articulate, inventive black engineer who was born in Jamaica and went to college in Boston. In the late 1960s, Barrett got into the electronics business with the help of SBA loans and some military supply contracts under the SBA program. By 1973, his company—the Barrett Group—located near Kennedy Airport in Queens, New York, had racked up $4 million in sales, and things were humming along in his two plants, which employed some 149 workers, many of them minorities.

Barrett was eager, as he puts it, "to become a Little Black General Electric." So he set out to develop a highly sophisticated FM broadcast tuner for military and commercial use. At about the same time, because of his outstanding contributions to the black business community, he was tapped to become executive director of the Congressional Project Safety Commission in Washington, D.C. Barrett, who is an challenge, thought that was good news.

But soon after he moved to Washington, he got some bad news. A short letter from the SBA informed him that his company had become ineligible for SBA contracts because Barrett's job in Washington had removed him from daily management of his business. Barrett quickly challenged the legality of what he describes as the SBA's "arbitrary and capricious" action. Pressed to spell out its policy, the agency barely came through with an explanation of sorts. The assistant director, of its regional office in New York, wrote: "Current policy is basically silent on day-to-day business activities. However, this [interpretation] is imposed."

Persistence paid off

Saddled with heavy research and development expenses for the new tuner and suddenly deprived of its government contracts, Barrett's company nearly went under. During a seemingly endless hassle with the SBA—which, was ever cited its congressional awareness—Barrett closed one plant, laid off 129 workers, and lost half a million dollars of his own money. Taken plus business drive, Barrett had to resign his post in Washington. Nine months later, the SBA reinstated his military contracts, at a time when Barrett had at his new Southampton indefinitely. *Modern Health and Medicine* called it "the finest performing tuner ever." (It may also be the most expensive.)

Remarkably, Barrett is not bitter about the experience, which, he says, is a fair cost of the SBA's mission. "They just don't know what they're doing," Barrett observes. "They could have done a service to the public by setting up my company as a model to raise the hope and will of people in the inner cities—rather than trying to kill the goose that laid the golden egg. But they cannot do that because they have failed to set goals, they lack leadership, and they do not even look at the impact of their programs on a community."

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May 3, 1979

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

As you are aware, Public Law 95-507 represents the most significant Act ever in the attempt to direct a fair proportion of Government procurement contracts to small and small disadvantaged business firms. In fact, it is generally agreed that your announced goal to triple Federal purchases from minority owned firms will not be accomplished unless the terms of P.L. 95-507 are vigorously and expeditiously implemented.

It has come to my attention that certain officials within Executive agencies have apparently violated certain provisions of the new Public Law. Pursuant to the newly amended Section 8(a)(9) of the Small Business Act, the Small Business Administration must provide an 8(a) certified firm an impartial hearing before denying it all contract support under the program. I am aware of at least three instances where SBA is, in fact, denying 8(a) contract support to certified firms without the benefit of a prior hearing. These three firms are:

Quadratech Research Corporation
143-11 Archer Avenue
Jamaica, New York 11436

In the case of Quadratech Research Corporation, SBA has committed to writing its determination to suspend all contract support, although no prior notice or hearing requirements were complied with.

As in the other two cases, this firm has not been served with notice nor provided an opportunity for a hearing as mandated by law.

At this time, I am not defending the merits of any of the cases recited above. What I am defending is their right, under law, to notice and a hearing. SBA's unwillingness to comply with statutory provisions is inexcusable and warrants strong remedial action. Unless immediate attention is directed to this situation, SBA will lose all credibility with the minority business community, and by implication, the effort of the Administration to assist minority firms will be regarded as highly suspect. For obvious reasons, too lengthy to recite here, we cannot -- must not -- allow this to happen.

The Administration's willingness to implement P.L. 95-507 is already subject to serious question by the small and minority business community. Recently, the Department of Defense has stated that it will not implement an Office of Federal Procurement Policy letter (79-1) creating a full-time position of Small and Disadvantaged Business Utilization within the Office of the Secretary of Defense. This is so even though the Honorable James T. McIntyre, Jr., Director of the Office of Management and Budget, by letter dated February 23, 1979, responding to a letter addressed to you and dated January 1979, advised that the Office of the Secretary of Defense would, in fact, comply with the OFPP letter.

Frankly, Mr. President, I am at a loss in dealing with agencies which choose to violate the law regardless of admonishments from the Congress. I do not know at all how to address the problem of the complete disregard by the DOD of a representation made to me on your behalf by Director McIntyre. It is imperative that something be done -- it is respectfully requested that strong measures be taken. Failure to act decisively at this point can render the provisions of P.L. 95-507 a practical nullity as well as defeating our mutual goal of promoting small and minority business interests.

With kindest regards and best wishes, I am

Sincerely,

Joseph P. Addabbo, M. C.

THE WHITE HOUSE

WASHINGTON

January 29, 1976

Dear Mr. Barrett:

Thank you for your December 10 letter to the President regarding the effect of the Small Business Administration's decisions on your business.

I have been informed that your firm has been reinstated in this 8(a) Program, and SBA is in the process of generating several contracts which will aid significantly in the company's growth.

I also understand that you met with agency representatives on January 19 to discuss your short and long range plans and explore the possibilities of assistance SBA could render.

The Small Business Administration is prepared to assume a leadership role in bringing together both public and private sector resources in an attempt to enable Quadratech to become a profitable firm.

Sincerely,

Paul C. Leach

Paul C. Leach
Associate Director
Domestic Council

Mr. Frederick E. Barrett
President
Quadratech Research Corporation
143-11 Archer Avenue
Jamacia, New York 11435

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July 18, 1980

Mr. Donald Boday
Commercial Litigation Section
Civil Division
Department of Justice
Washington, D.C.

RE: U.S. v. Sequerra Company, et al.,
Civil Action No. 79C974 (E.D.NY.)

Dear Mr. Boday:

Pursuant to our telephone conversation of yesterday I am writing to clarify the position of Mr. Barrett and the Sequerra and Quadratech companies in the above-referenced litigation. As you have learned from your recent meeting with representatives of the Small Business Administration ("SBA"), the Minority Business Development Agency ("MBDA"), the Economic Development Administration ("EDA"), and the Urban Development Action Grant program of HUD ("UDAG"), the context of this litigation is a complex one, involving several concurrent efforts to revitalize the Barrett companies after years of difficulties arising from the companies' relationship with SBA.

To capsulize the history of the litigation, the action was originally filed by SBA to collect an outstanding debt of the Barrett companies resulting from participation in an SBA loan program. Prior to the institution of the suit the Quadratech and Sequerra companies had been actively manufacturing electronic components for the military under SBA 8(a) contracts and stereo

FM tuners for the commercial market. This latter activity had a promising start: the product received acclaim from over a score of audio journals and a prestigous award from the Japanese industry.

During the history of relations with the SBA 8(a) program the Barrett companies had encountered several difficulties, beginning during the 1973-75 period in which Mr. Barrett took leave to serve as Executive Director of the Consumer Product Safety Commission and continuing through 1979 when business relations with the agency effectively stopped. Ultimately, as the companies were beginning to become successful through development of the commercial line, the SBA gave notice of termination of the Barrett 8(a) contract program status; this notice had been made without any benefit of due process for the Barrett companies. The immediate problem resulting in this SBA action had been the Barrett group's inability to repay outstanding 8(a) contract advances as they became due. The mainstay of the companies, and the principal source of funds for such repayments, however, had been 8(a) contracts. While SBA refused to award three contracts which had been reserved for the Barrett companies the companies began to sink further into financial difficulty. The actions of the SBA and the resulting impact on the Barrett companies are more specifically described and documented in the Amended Answer and Counterclaim filed in February, which is attached hereto for your convenience.

Having lost their base of support at such a crucial period, the Barrett companies were forced to shrink from 140 employees (primarily minority) to a handful of production and assembly personnel. Finally, in January of this year, the SBA seized the facility of the companies and liquidated the remaining production equipment and inventory. Currently the Barrett companies have no real existence apart from the occasional commercial sale of FM tuners produced in Mr. Barrett's garage.

The counterclaim filed in January was for the purpose of prodding the SBA into a negotiation position on the original complaint. The Barrett companies had a debt obligation which had to be settled but nonetheless had shown themselves as unusually viable minority businesses; the delay in settling the debt was destroying the companies due to the impact of the litigation upon the companies' production capabilities and reputation.

In the past few months MBDA, EDA, and UDAG have joined in an effort to revitalize the Barrett companies through a fresh injection of working capital. Those agencies have set forth a specific relief plan for the Barrett group, involving relocation of the business to Baltimore, management assistance, and one or more major loan guarantees. That relief plan has been structured and has been ready for implementation (which may take several months in itself) since early spring. The agencies understandably are hesitant to proceed while the SBA litigation is outstanding but, for budget reasons, cannot wait indefinitely.

Negotiation with SBA has been underway since March, with our initial formal letter of proposed terms to Assistant U.S. Attorney Roger Field dated April 3. Despite assurances for prompt action in light of the urgency of the proposed relief plan, the SBA has taken several weeks to make a formal response to each of our written proposals. Now, as you know, agreement has been recently reached on the SBA debt under terms which we had basically proposed in April. The problem facing us now is that of the government position upon the counterclaim, which we had brought primarily to prompt discussion on the debt which had been the subject of the SBA complaint.

We have no interest in pursuing the counterclaim and are quite willing to agree to a dismissal of it without prejudice. We are aware of a general policy within the Department of Justice against dismissals without prejudice and can understand the soundness of such a policy as a device to avoid piecemeal settlement of litigation. In this unusual instance, however, we feel that dismissal without prejudice does not contravene that policy and is reasonable under the circumstances. Several points are important in this regard:

1. The controversy which initiated the suit and the aspect which is of by far the greater monetary significance to the federal government has been settled.

2. The cause of action retained by the Barrett group under a dismissal without prejudice will be subject to the statute of limitations, which will expire several of its aspects in the near future.

3. The Barrett group has no interest in pursuing the cause of action in the counterclaim but cannot sacrifice it since the group has no assurance that the SBA will provide the support and cooperation promised for the future. The matters addressed by the group in its counterclaim are viewed as the only means to facilitate the administrative help the companies needed but did not receive in the past.

4. The SBA will be a major beneficiary of a prompt settlement of the suit since if the suit is not resolved soon (through a dismissal without prejudice of the counterclaim) the relief package developed by MBDA, EDA, and UDAG may dissolve, further hindering the development of the Barrett group as a successful business able to fully meet its future obligations to SBA.

5. Expert agencies such as UDAG, MBDA, and EDA have all independently adjudged the Barrett group to be of great promise in efforts to commercially develop inner city areas and privately employ minority group members. Such social and economic value will be lost if the group is weakened by further delay in settlement of the litigation.

6. The due process cause of action raised in the counterclaim is of compelling validity based on the relevant statutory law. Given the history of the SBA, that claim could only be destructive and embarrassing to that agency if the counterclaim is pursued in court, which the Barrett group is prepared to do if a dismissal without prejudice cannot be reached.

7. The principal monetary aspect of the counterclaim, involving a dispute over advance monies received from the SBA for military contracts, is a matter properly settled before the appropriate defense contract authorities and is currently being pursued with them.

8. The equities of the case strongly weigh against further delay in settling it. The extensive efforts of UDAG, EDA, and MBDA to revitalize the company, the existing settlement of the SBA

debt, the future loss of the counterclaim cause of action through the running of the statute of limitations, and other factors discussed above all mitigate heavily against continuation of the case. The interests of the federal government as a whole favor a prompt settlement, which incorporates a dismissal without prejudice of the counterclaim.

I hope you can appreciate the prolonged frustrations experienced by the Barrett group thus far in attempting to settle this litigation. We believe that the unique scenario which has led to the current situation provides an ample basis for a waiver from the general policy in this case. A dismissal without prejudice seems the most fair and equitable solution for all parties.

I would be glad to meet with you and, if appropriate, your Director or a representative of Assistant Attorney General Daniel's office to further discuss this matter. Feel free to contact me in this regard.

Sincerely yours,

Joseph E. Pattison

JEP:pa
enclosure

cc w/o enc.: Vernon Weaver
Janice Neimi
George Karras
Curtis McClinton
Daniel Henson
Barry Robinson
George Murray
Kathy Dexter
Ralph MacMurray
Frederick Barrett

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA Plaintiff, v. THE SEQUERRA CO., INC., RICHARD SEQUERRA, FREDERICK E. BARRETT, BETTY ANN BARRETT, QUADRATECH RESEARCH CORP., and FIRST NATIONAL CITY BANK, Defendants.	)	Civil Action No. 79C 974

FIRST AMENDED ANSWER OF THE SEQUERRA CO., INC., FREDERICK E. BARRETT, BETTY ANN BARRETT AND QUADRATECH RESEARCH CORPORATION AND COUNTERCLAIM OF DEFENDANT QUADRATECH RESEARCH CORP.

Defendants, by and through counsel, set forth their Answer to Plaintiff's Complaint and say:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

1. Defendants need not reply to jurisdictional allegation.

2. Defendants need not reply to jurisdictional allegation.

3. Admitted.

4. Admitted.

5. At this time Defendants can neither admit nor deny the allegations in paragraph 5.

6. Admitted.

7. At this time Defendants can neither admit nor deny the allegations in paragraph 7.

8. At this time Defendants can neither admit nor deny the allegations in paragraph 8.

9. At this time Defendants can neither admit nor deny the allegations in paragraph 9.

10. Admitted.

11. At this time Defendants can neither admit nor deny the allegations in paragraph 11.

12. At this time Defendants can neither admit nor deny the allegations in paragraph 12.

13. At this time Defendants can neither admit nor deny the allegations in paragraph 13.

14. Defendants specifically adopt the foregoing categorical recitations.

15. Denied.

16. Denied, except insofar as Defendants admit that Plaintiff has made an election.

17. At this time Defendants can neither admit nor deny the allegations in paragraph 17.

18. At this time Defendants can neither admit nor deny the allegations in paragraph 18.

19. Defendants specifically adopt the foregoing categorical recitations.

20. Admitted.

21. At this time Defendants can neither admit nor deny the allegations in paragraph 21.

22. Denied.

THIRD DEFENSE

As and for their affirmative defense, defendants allege:

23. Prior to and at the time of the loan agreement and security interest agreement entered into by the defendant, upon which plaintiff seeks to recover in this action as guarantor/assignee, the Small Business Administration ("SBA"), upon whose behalf plaintiff seeks recovery, maintained an ongoing relationship with the defendant, Quadratech Research Corp., ("QRC"), parent corporation of the defendant, Sequerra Co., Inc., ("Sequerra") under its minority-assistance government contracts procurement ("Section 8(a)") program.

24. Under its Section 8(a) program, SBA had, during the two-year period prior to the execution of the loan agreement at issue here, procured for QRC participation in a number of government contracts. These contracts had been and continued to be at the time of the loan agreement in issue here the foundation of QRC's commercial operations and the basis of QRC's financial viability.

25. By virtue of its prior and continuous course of dealings with QRC, as well as the terms of the loan and guaranty agreement, SBA was aware at the time of the loan agreement in issue of the interrelatedness of QRC and Sequerra, and recognized that the financial viability of the subsidiary, Sequerra, was inextricably linked to the continued participation of the parent Corporation, QRC, in the Section 8(a) program.

26. By correspondence and other communication with the defendant, QRC, at an indeterminate point occurring during the five-month period immediately following the execution of the loan agreement in issue here, SBA wrongfully, without statutory

or administrative authority, and without due process of law, terminated QRC's participation in the Section 8(a) program.

27. By reason of its continuing exclusion from the Section 8(a) program, QRC was unable to generate or sustain the business support necessary to the commercial profitability of the defendant, Sequerra.

28. As a direct consequence of the Section 8(a) termination of QRC and its ensuing financial difficulties, the defendant, Sequerra, was unable to meet its repayment obligations under the loan agreement here in issue, and consequently became in default under that agreement in August, 1976.

29. By reason of SBA's wrongful termination of QRC's Section 8(a) program participation, done with full knowledge that such action would prevent the defendant from fulfilling its repayment obligations under the loan agreement here in question, SBA directly contributed to the default of Sequerra by its own wrongful actions, thus making repayment impossible, and is now precluded from any recovery based upon the rights that it would otherwise possess against the defendants as guarantor/assignee of the note here in issue.

WHEREFORE, having fully answered the complaint, defendants pray that it be dismissed with costs to the plaintiff.

COUNTERCLAIMS OF DEFENDANTS QUADRATECH AND SEQUERRA

Defendants Quadratech and Sequerra file their Counterclaim against the Plaintiff and Counter-Defendant, United States of America and allege:

COUNT I

1. This Court has jurisdiction pursuant to 28 U.S.C. §1331(a).

2. At all times pertinent hereto the Small Business Administration was an agency of the Counter-Defendant, United States of America, established and governed by Title 15 U.S.C. §631 et seq., as amended.

3. Pursuant to §637 of Title 15 U.S.C. and Executive Order No. 11518, the Counter-Defendant United States of America established a program to provide assistance to minority-owned enterprises. This program is popularly referred to as The 8(a) Program. Under 8(a), the United States, through its Small Business Administration, committed itself to providing contract procurement assistance for minority business, as well as business development grants, advance payments and management assistance.

4. On March 23, 1972 Quadratech was approved for participation in the 8(a) Program for a two year period for $1,000,000 of assistance per year. (A copy of the SBA correspondence granting admission is attached hereto as Exhibit A.)

5. In December of 1973 Mr. Frederick Barrett, the principal stockholder and chief executive officer of Quadratech, was appointed as executive director of the Consumer Product Safety Commission, an agency of the United States Government. As a result of this appointment Mr. Barrett moved to Washington, D.C., and

6. Prior to Mr. Barrett's appointment in December of 1973 and again in March of 1974 Quadratech requested that SBA continue its participation in the 8(a) Program. In March of 1974 the SBA indicated that it would continue Quadratech in the 8(a) Program provided certain financial and corporate records were provided.

After Quadratech attempted to provide the requested information SBA responded seeking clarification of certain matters but also adding a new condition; that being proof that Mr. Barrett and his wife were actively engaged in the day-to-day operation of the business. SBA indicated that absent such day-to-day activity, the 8(a) status would be terminated (a copy of SBA correspondence dated April 9, 1974 is attached hereto as Exhibit B).

7. Mr. Barrett's position with the Consumer Product Safety Commission precluded his full-time participation in the business of Quadratech. He had in fact established a blind trust to hold his assets during his government service.

8. As a result of SBA's action Mr. Barrett resigned his position in the government in January of 1975. It was not until September 25, 1975, however, that SBA reinstated Quadratech in the 8(a) Program.

9. As a result of SBA's refusal to continue Quadratech in the 8(a) Program Quadratech suffered severe financial loss and potential for growth.

10. At all times relevant hereto the Sequerra Co., Inc., was a subsidiary of Quadratech and inextricably linked both financially and operationally to that company. This relationship between the companies was well known to SBA. The termination of Quadratech's participation in the 8(a) program resulted

in direct and severe financial loss to Sequerra in terms of lost profits and potential growth.

11. The actions of the SBA in denying continued participation in the 8(a) Program were arbitrary and capricious and without rational basis so as to deprive Quadratech of its property without due process of law afforded under the 5th Amendment of the Constitution of the United States.

COUNT II

12. The allegations set forth in paragraphs 1 - 10 of Count I are realleged as if fully set forth herein.

13. The action of SBA in terminating QRC's participation in the 8(a) Program was unlawful in that it violated the provisions of 15 U.S.C. §631 et seq.

COUNT III

14. The allegations set forth in paragraphs 1 - 10 of Count I are realleged as if fully set forth herein.

15. The actions of SBA in refusing continued participation in the 8(a) Program were in breach of the implied contract to allow full participation of qualifying firms in the program pursuant to the then existing regulations.

PRAYER FOR RELIEF COUNTS I, II AND III

WHEREFORE, Defendants and Counter-Plaintiffs Quadratech Research Corporation and The Sequerra Co., Inc. pray:

1. That this Court enter its declaratory Judgment that the Counter-Defendant United States of America: a) deprived Quadratech of its property without due process of law in violation of the Fifth Amendment to the Constitution of the

United States; b) violated the provisions of 15 U.S.C. 637; and c) breached its implied contract with Quadratech to provide full participation in the 8(a) Program pursuant to its then existing regulations.

2. That this Court enter judgment for damages against the Counter-Defendant United States of American in favor of Quadratech and Sequerra in the amount of $20,000,000.

3. For such other and further relief as the Court may deem just and proper.

COUNT IV

16. The allegations set forth in paragraphs 1- 10 of Count I are realleged as if fully set forth herein.

17. On September 25, 1975, QRC was reinstated in the Section 8(a) Program for contract procurement assistance and financial assistance. At the time of reinstatement the Small Business Administration approved total assistance in the amount of $2.5 million for the following fiscal year. (A copy of SBA correspondence dated September 25, 1975, is attached hereto as Exhibit C.)

18. That during the ensuing three-year period, QRC was awarded three contracts under the 8(a) Program for a total amount of $1,271,000.

19. On December 6, 1978, a major contract was terminated by the United States Marine Corps for the convenience of the government. At the time of this termination there were outstanding advance payments due to SBA from QRC in the approximate amount of $200,000. The termination proceedings concerning this contract are still pending and total liquidation of

the remaining advanced payments is dependent upon QRC receiving its settlement from the Marine Corps.

20. In November, 1978, the SBA initiated a policy prohibiting advance payments under the 8(a) Program, in circumstances wherein a contractor had outstanding advance payments that were unpaid. As a result of the outstanding advance payments due on the Marine Corps contract, QRC was denied further contract assistance because of the failure to repay outstanding advances. This was done despite the fact that QRC's failure to repay was a direct consequence of the termination proceedings and pending negotiations with SBA, and was thus totally beyond QRC's control. (A copy of SBA correspondence dated December 28, 1978 is attached hereto as Exhibit D.)

21. On August 29, 1978, the Small Business Administration Liquidation Division served a notice of default and demand for payment upon QRC for $350,000 pursuant to its guarantee of the Chemical Bank loan to Sequerra, Inc. (A copy of said notice is attached hereto as Exhibit E.)

22. In the period subsequent to November 1978 QRC made repeated and numerous attempts to arrange alternate repayment schedules for the advance payments under the Marine Corps contract. Said proposals necessitated continuing SBA contract assistance and there were in fact no less than three contracts available and reserved for QRC but not awarded by SBA. These contracts would have enabled QRC to continue operations and even retire advance payments from the prior contract.

23. On February 21, 1979, SBA corresponded with QRC demanding that QRC provide justification why its participation in the Section 8(a) Program should not be terminated. (A copy

of said SBA notice is attached hereto as Exhibit F.) On February 23, 1979, QRC responded in writing to the SBA demand. No hearing was afforded by SBA to determine the status of QRC's participation in the 8(a) Program.

24. On April 27, 1979, SBA notified QRC in writing by its acting regional director, Leonard A. Rosen, that because of proceedings instituted in this Court for collection of the funds pursuant to the loan guarantee, SBA could take no further contractual action "with any other government agency under the 8(a) Program on behalf of Quadratech" (a copy of this letter is attached hereto as Exhibit G).

25. In attempts to obtain relief from what was deemed to be unlawful and arbitrary and capricious action on the part of the SBA, principals of QRC sought intervention of Congressman Joseph Adabbo who corresponded with the Administrator of the SBA in Washington, D.C. By letter dated June 28, 1979, SBA Administrator A. Vernon Weaver informed Congressman Adabbo that 8(a) participation would "be limited in the future and will exclude further financial assistance and 8(a) contracting support until the firm has settled all debts owed to SBA." The actions described in Mr. Weaver's letter were instituted by SBA without benefit of formal hearing for QRC. (This letter is attached hereto as Exhibit H.) This action on the part of SBA was further communicated to QRC by Richard M. Philbin, Director, Office of Program Surveillance and Assistance by letter dated June 29, 1979 (a copy of this letter is attached as Exhibit I.)

26. On September 13, 1979, the SBA informed QRC in writing that the New York Regional Office proposed to recommend to the Associate Administrator that QRC's participation in the

8(a) Program be terminated. (A copy of this letter is attached hereto as Exhibit J). This letter was transmitted by SBA despite the fact that QRC's participation had, for all intents and purposes, been terminated for months. QRC responded to the SBA's September 13, 1979 letter in writing on September 25, 1979. As of this time QRC has not been afforded a hearing concerning its termination.

27. That during the time period in which SBA has denied participation by QRC in the 8(a) Program, three contracts totaling $1.1 million that were reserved for QRC were denied by the SBA. These contracts are as follows:

DAAH01-78R-0512 Electrical Component -- $68,400;

DAAH01-78R-1128 Circuit Cord Assembly -- $114,196;

DAAB07-78R-0279 Power Supply -- $715,757.95.

These contracts are set forth in part in a letter dated February 23, 1979 from Dratin Hill, Assistant to the Acting Assistant Regional Director for Procurement Assistance in the regional office of SBA (this letter is attached hereto as Exhibit K). Additionally SBA denied an add on to an existing contract valued at $214,000.

As a result of SBA's actions in terminating participation in the 8(a) Program, QRC has suffered lost profits on the foregoing contracts and other severe and permanent financial loss.

28. SBA was under the statutory obligation to continue QRC's 8(a) participation until such time as QRC was provided a hearing on the issues of its termination. Section 637 of Title 15, U.S.C., expressly provides:

> Within ninety days after the effective date of this paragraph, the Administration shall publish in the Federal Register rules setting forth these conditions or circumstances pursuant to which a

> firm previously deemed eligible by the Administration may be denied assistance under the provisions of this subsection: Provided, that no such firm shall be denied total participation in any program conducted under the authority of this subsection without first being afforded a hearing on the record in accordance with Chapter 5 of Title 15.

29. In addition to unlawfully terminating QRC SBA also unlawfully seized in excess of $100,000 of the funds of QRC needed to complete one of its contracts for the Navy resulting in default thereunder.

30. In terminating and refusing to provide further assistance under the 8(a) Program, without benefit of a hearing, SBA violated the provisions of 15 U.S.C. §637(a)(g) and the provisions of the regulations issued pursuant thereto and contained in 13 C.F.R. §104 et seq.

COUNT V

31. The allegations in paragraphs 1-10 of Count I and 14-28 of Count IV are realleged as if fully set forth herein.

32. The actions of SBA in terminating QRC's participation in the 8(a) program were arbitrary, capricious, and without rational basis and deprived QRC of property without due process of law under the Fifth Amendment to the Constitution of the United States.

COUNT VI

33. The allegations in paragraphs 1-10 of Count I and 13-28 of Count II are realleged as if fully set forth herein.

34. The actions of the SBA in refusing continued participation in the 8(a) program were in breach of the implied contract to allow full participation of qualifying firms in the program

PRAYER FOR RELIEF COUNTS IV, V, AND VI

WHEREFORE, counter-plaintiff prays:

1. That this Court permanently enjoin the SBA from terminating Quadratech's participation in the 8(a) Program without the benefit of its full administrative hearing.

2. That this Court order the Small Business Administration to reinstate QRC as a full participant in the 8(a) Program including procurement and awards of appropriate contracts and to release all funds of QRC held by SBA.

3. That this Court enter judgment against the United States in favor of QRC and Sequerra in the amount of $20,000,000.

4. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: _____

Brian P. Phelan
Joseph E. Pattison
Jim H. Holt
O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006

Attorneys for Defendants

Of Counsel:

Kendell A. Mintner
Burns, Jackson, Miller,
Summit and Jacoby
445 Park Avenue
New York, New York 10020

JURY DEMAND

Defendants and Counter-plaintiffs demand trial by jury on all issues herein.

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August 21, 1980

Mr. A. Vernon Weaver
Administrator
Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20416

RE: Frederick E. Barrett

Dear Mr. Weaver:

As counsel for Mr. Frederick Barrett and the Sequerra and Quadratech companies I generally confine my communications with government agencies to those with members of the respective general counsel offices. It is only in the most compelling of circumstances, therefore, that I am contacting you directly with regard to Mr. Barrett.

I believe you are aware of litigation in New York involving past SBA loans to the Barrett companies; we have been working with Deputy General Counsel Janice Niemi to resolve that suit, the settlement of which is currently being reviewed by the Department of Justice. Although I am not writing to you specifically about that suit, the basis of that litigation does represent the first chapter in what is now a long history of action and inaction by the SBA which has completely undermined Mr. Barrett's companies and his own personal finances.

I do not want to burden you with an exhaustive narrative of Mr. Barrett's relations with the SBA. Rather, a short sketch of the pertinent facts (which can be verified through several sources in your agency) should be sufficient. Let me explain first of all that six and seven years ago Mr. Barrett had a thriving business based on a top quality stereo tuner product which met with worldwide acclaim as the most technically advanced product on the commercial market. Mr. Barrett and his product were featured on the covers of over twenty technical journals and he was awarded a prestigious Japanese award for merit in the high technology audio field. In short, Mr. Barrett was a model black entrepreneur who faced a bright future. As the recipient of SBA loan funds and 8(a) setaside benefits, his enterprise held great promise as one of the few minority firms to meet with unqualified commercial success; he was well on the way to a rare achievement for 8(a) companies: actual "graduation" from the 8(a) program in the manner originally intended by Congress in promulgating that program.

Mr. Barrett's difficulties began when he was asked to serve as Executive Director of the Consumer Product Safety Commission. He agreed to accept the position -- for $1 a year -- only after assuring himself that his companies could continue under a trustee management. Shortly after coming to Washington, however, he was told by SBA that he was no longer eligible for 8(a) contracts since he was not effectively involved in management of the business. This requirement had never been enunciated to him by SBA and, when he fought the decision, he was told that this was not a formal legal or policy requirement but that such a requirement seemed "implied" in SBA practice.

His unselfish gesture in serving at no personal profit with the CPSC thus resulted in this arbitrary cutoff of 8(a) benefits. Even though he was forced to leave the government to attend to his now faltering business, the temporary loss of his setaside contracts forced him to close one factory, lay off 129 workers, and fall in arrears on his SBA loan payments. Although SBA officials agreed verbally to let the loan ride while he rebuilt the company, after several months he was declared no longer eligible for the 8(a) program due to this outstanding debt. That notice of termination, moreover, was sent -- as your own officials have subsequently acknowledged -- in gross violation of the pertinent due process requirements. With this loss of cash flow, his business foundered. Last year the SBA then sued him for his outstanding debt.

Once our firm became involved in that litigation, we were not hesitant to point out in our counterclaim the unfortunate actions of SBA which gave rise to Mr. Barrett's loan default. If the problems had come to a head or resolution in that litigation, however, I would not be writing to you now since we would be more than happy to bring the Barrett story to light before a jury in a court of law. Sadly enough, however, the SBA actions which have been destructive of Mr. Barrett's companies did not cease with the institution of the suit.

In the context of the suit itself, the same bureaucracy which devastated the Barrett companies has effectively ground our attempts to settle the suit to a halt. We commenced negotiations for settlement in March on the basis that

any out-of-court settlement would be attractive to us only if it meant some form of immediate relief for the companies, which had been all but destroyed. Despite our constant emphasis on the need for prompt action and the good faith efforts of Ms. Niemi, the SBA and the Department of Justice responded to each of our offers at a glacial pace. With each week a new layer of bureaucracy seemed to intervene until only in early July were we able to have a proposal for settlement submitted to the Department of Justice; that proposal has sat unattended since then and has no prospect for final action for at least another month.

Meanwhile extensive efforts at the Economic Development Administration at Housing and Urban Development have been undertaken to fashion a major relief package for revitalization of the Barrett companies. Understandably, however, those agencies are reluctant to go forward with any relief until the litigation is settled. Many people at those agencies have expended substantial good faith efforts in helping what they have recognized as a very promising way to commercially develop inner city areas and privately employ minority group members; they cannot be expected to wait indefinitely. If a fresh impetus is not given on the government side to resolve the suit, there is a serious danger that EDA and HUD support will begin to subside.

In recent weeks Mr. Barrett has engaged in good faith efforts to cooperate with SBA on a fresh basis through Region III as a result of his decision to move his businesses to Baltimore. These efforts include identification of 8(a) contracts which could be used to begin production again and an application for title 7(J)10 funds to market products in Europe, by specifically renewing sales contracts there which, from recent Italian overtures, could realistically bring him $300,000 in commercial business. Mr. Barrett has worked tirelessly to obtain this relief but has again been frustrated by the SBA bureaucracy. After going so far as having the appropriate documents signed for release of the 7(J)10 funds, an impediment was again raised in the form of last minute technical objections.

Similarly Mr. Barrett has been attempting to secure the release of funds related to a Navy 8(a) contract which have been frozen in a joint 8(a) account for over a year. Those funds, totalling approximately $10,000 are not disputed by the SBA but remain unreleased due to nothing more, as far as we can perceive, than the impediment of the bureaucracy.

The type of immediate relief mentioned above, which is within the power of SBA to provide now, is needed desperately by Mr. Barrett. A short survey of facts should be enough to point out the dire straits of Mr. Barrett and his companies:

- On February 10 the SBA auctioned off most of the Barrett corporate assets, liquidating his last factory and most of its production equipment.

- Mr. Barrett has since survived by producing individual products in his garage with the help of a few ex-employees who assemble components in their homes.

- Mr. Barrett personally has not received any salary this year, meaning that all of his real estate properties face imminent foreclosure, his daughter will probably be unable to return to college this year, and his family may be displaced from their home.

I hope the sad ironies of this situation are not lost on you. In the context of the litigation the SBA is demanding money from the Barrett companies while at the same time making it impossible for them to pay by completely blocking avenues of financial relief. More generally, the very agency charged with supporting such small minority businessmen has for years been destroying one of its most promising and responsible constituents by arbitrary and unreasonable actions. If there is any one reason for this situation, it would appear to be a simple lack of responsibility on the part of any one official in SBA. Those in policy and decision-making positions have continually avoided firm action through one means or another. Even if in each instance, a "normal" explanation could be found, the equities of Mr. Barrett's case overwhelmingly show that his is not a "normal" situation. If extraordinary efforts are needed to remedy his problems, it is because he has suffered extraordinary damage over the years at the hands of SBA.

The firm, responsible action which is so desperately needed centers on four items:

1. Title 7(J)10 Funds. These funds must be released immediately (there is no legal impediment in doing so) to allow coordination with arrangements made in Europe.

2. Frozen Navy Contract Funds. These funds have no legal impediment for release and can be turned over to help Mr. Barrett through the simple signing of a check.

3. New 8(a) Contracts. New setaside contracts can be expedited to allow production within a matter of weeks.

4. Litigation Settlement. The review procedures at Justice and SBA must be expedited to allow for prompt good faith settlement. Further delay only makes settlement a less viable solution for the Barrett group.

Such actions seem not only fair but long overdue in light of Mr. Barrett's critical situation.

We would be glad to meet with you to further discuss Mr. Barrett's grave problems and the various constructive ways in which SBA can help to resolve them.

Sincerely yours,

Joseph E. Pattison

JEP:pa

cc: Janice Niemi
George Karras
Curtis McClinton
Daniel Henson
Barry Robinson
George Murray
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WILLIAM C. KELLY (1918-1979)

*NOT MEMBER OF D.C. BAR

February 24, 1981

Ms. Susan Hawkes
Old Executive Office Building
Room 122
Washington, D.C. 20501

Re: F. E. Barrett/United Sounds of America/Sequerra Company

Dear Ms. Hawkes:

For the purpose of acquainting you with the problems of Mr. Frederick Barrett which I discussed with you recently, I am enclosing a briefing paper concerning the appeal for White House assistance on behalf of Mr. Fred Barrett. Mr. Barrett strongly feels that his case deserves special attention in light of the circumstances surrounding the demise of his businesses. As the paper discusses, the origin of Mr. Barrett's difficulties was in part attributable to his own public service as Director of the Consumer Product Safety Commission. Most importantly, Mr. Barrett offers an extremely rare opportunity to

the federal government to provide assistance to a minority-owned American business enterprise with an established international reputation and a real potential for leadership in its field. The assistance sought would involve no cash expenditure from the current federal budget.

Reference is made in the briefing paper to several governmental agencies whose roles in the Reagan administration may be revised or reassigned. To the extent that the redevelopment of Mr. Barrett's businesses can be facilitated by alternative methods to those outlined in the briefing paper, Mr. Barrett welcomes any discussion of these alternatives.

Also enclosed, by way of background information, is a letter written last year to Mr. Weaver, the then Administrator of the Small Business Administration. Mr. Barrett's problem with the SBA was reflected in the treatment of the letter: neither Mr. Weaver nor any assistant took the time to give us so much as a courtesy reply.

I hope we will be able to further discuss this situation which has great constructive potential. Thanks very much for your cooperation.

Sincerely,

Joseph E. Pattison /pm

Joseph E. Pattison

JEP:sjs

Enclosures

WHITE HOUSE EXECUTIVE STAFF BRIEFING PAPER

FREDERICK E. BARRETT

This paper is designed to acquaint concerned members of the Reagan Administration with the business enterprises of Mr. Frederick E. Barrett, a black entrepeneur in the field of high-technology electronics, and to describe the history of his company's operations, including the previous involvement of governmental assistance programs. This paper is presented in support of an appeal for urgently needed intervention in and coordination of the Barrett companies' relations with several governmental entities, including the Small Business Administration and the Economic Development Administration.

BACKGROUND

Mr. Barrett is a Jamaican-born U.S. citizen who came to this country at age 18 with virtually no resources. He studied electrical engineering at Northeastern University where he received a Bachelor of Science and at the Massachusetts Institute of Technology, where he did graduate work in scientific and physical technology. His business enterprises include Quadratech Research Corporation (QRC), incorporated in 1970, and Sequerra, Inc., corporated in 1972.

Beginning in 1970, QRC manufactured high-technology electronic equipment and participated successfully in the Small Business Administration's minority set-aside government contract program (the so-called "8a" program). Over the course of the next eleven years QRC performed work on approximately twelve contracts under the 8a program, all defense-related.

Sequerra, Inc. has operated as a manufacturer of high-fidelity electronic audio components. Sequerra's unique FM broadcast tuner, the Sequerra Model I, is the end result of Mr. Barrett's research and development efforts to become a world leader in the electronics field. The Model I has been recognized by every authoritative source as the finest FM tuner made and in 1979 it received the most prestigious award given in the field, the State of the Art Trophy, presented by the Japanese trade magazine, Stereo Sound.

Mr. Barrett has been committed from the outset of his businesses to the development and utilization of urban minority labor. Both QRC and Sequerra operated in Queens, New York; a local work force totalling in excess of 100 employees was trained and employed at their facilities.

FINANCIAL AND GOVERNMENTAL DIFFICULTIES

Since roughly mid-1979 both QRC and Sequerra have been effectively bankrupt and virtually out of production. Ironically, the decline of the companies' finances has roughly paralleled the growth of the companies' reputation.

The source of the Barrett companies' financial strain was the souring of relationships between Mr. Barrett and certain officials of the Small Business Administration's New York Regional Office. Shortly after his nomination by President Nixon as Executive Director of the Consumer Product Safety Commission in late 1973, Mr. Barrett made certain public remarks concerning the administration of the "8a" program that incurred the antipathy of several SBA officials. Mr. Barrett's forthright and at times abrasive manner has made his many efforts at reconciliation over the intervening time period difficult, and the lack of communication and cooperation between the parties has been ultimately destructive.

Substantively, the friction between Mr. Barrett and the SBA contributed to the SBA's termination of QRC from the "8a" program. This occurred on two occasions, once in 1974 and again in 1979. Following the reinstatement of QRC in 1975, QRC, still under the auspices of the SBA's New York Regional Office, performed work on only a small number of 8a contracts, at a level of production that was well below its capabilities. By 1978, QRC and, as guarantor, Sequerra, were behind in the

repayment of several SBA-insured loans, totalling $350,000. The telling blow to the companies' viability occurred in 1979 when the SBA ceased authorizing payments from a QRC advance account utilized in the performance of an 8a contract. The SBA withheld the funds in that account against the outstanding indebtedness of QRC and Sequerra to the SBA. The freezing of this account precluded completion of the contract, interrupting the companies' cash flow and precipitating the collapse of their finances.

LITIGATION BETWEEN THE SBA and MR. BARRETT

In April, 1979, the SBA filed suit against QRC, Sequerra, and Mr. and Mrs. Barrett to recover the amounts owed under the guaranteed loan agreements. Mr. Barrett, acting without counsel, filed a counterclaim based on the SBA's termination of QRC from the 8a program. These actions were taken by the SBA without a hearing, contrary to the statutory requirement of such a hearing contained in Public Law 95-507, 15 U.S.C. § 637. Mr. Barrett defended the alleged default on the grounds that the SBA's actions had contributed substantially to the companies' inability to make payment.

In February, 1980, the SBA foreclosed on the QRC indebtedness and disposed of its fixed assets by auction. Equipment and fixtures with a book value of $340,000 were sold for $12,000.

In December, 1981, the various parties to the litigation entered a stipulation of dismissal, under whose terms the defendants agreed to repay the full principal amount of the outstanding loan to the SBA over a six-year period. Payments at six-month intervals were to begin on June 1, 1981. Mr. Barrett's counterclaim was dismissed with prejudice, i.e., permanently and with no recourse.

Mr. Barrett regarded his counterclaim as his sole remaining asset in his effort to rectify the damage done in the conflict with the SBA. He agreed to dismiss that counterclaim only because representatives of the SBA's Washington Office had urged him to do so as a prerequisite to a renewed SBA contract-procurement assistance effort, this time orchestrated through the SBA's Philadelphia Regional Office.

In addition, prompted by a spreading awareness of the circumstances, officials at the Economic Development Administration and within the Commerce Department's Urban Development Action Grant Program had become interested in redeveloping the Barrett enterprises, but felt precluded, either by law or policy, from committing assistance to the project while the SBA litigation remained pending. Mr. Barrett accordingly agreed to a dismissal on the only terms offered by the SBA. The viewpoint of the SBA's New York Regional Office, hardened by the history of the relationship with Mr. Barrett, would not approve any reduction in the amount of the outstanding loan.

CURRENT CIRCUMSTANCES

Utilizing $75,000 made available through a grant from the Commerce Department, the Baltimore Economic Development Corporation has prepared a financial redevelopment plan for Sequerra and a new corporation, United Sounds of America, Inc., recently formed and located in the Park Heights Redevelopment area of Baltimore. This plan incorporates loans totalling almost $9 million to be guaranteed by the EDA, as well as loan assistance from the Commerce Department under the Urban Development Assistance Grant program, and the City of Baltimore. (A $164,000 loan from the City of Baltimore was recently approved on February 11.) Equity financing by a consortium of Minority Enterprise Business Investment Corporations ("MESBIC"s), is currently being negotiated, and the total EDA assistance package application is being completed. With the proceeds of the City of Baltimore loan, Mr. Barrett hopes to resume production of the Sequerra Model I at the Park Heights facility.

THE CURRENT NEED

For the redevelopment of Mr. Barrett's businesses to succeed, the outstanding obligation to the SBA of QRC, Sequerra and the Barretts personally must be either substantially reduced or eliminated, or its repayment deferred indefinitely. This continuing liability is the product of unfortunate circumstances, personal animosities and long-standing barriers to cooperation. It does not reflect any inability of Mr. Barrett's enterprises

to succeed as viable and productive business entities. Nevertheless, the successful refinancing of the enterprise is seriously handicapped by this outstanding debt, which additionally jeopardizes Mr. Barrett's personal and family financial status, and is a constant source of personal concern to Mr. Barrett.

In addition to the government's forbearance on the loan obligation, an expeditious processing of the EDA loan assistance application would enhance the project's chances for success immeasurably. Similarly, assistance provided through the SBA's 8a program or through the UDAG program could be of substantial help.

POLICY CONSIDERATIONS; OPPORTUNITIES FOR SUCCESS

In sum, Mr. Barrett's appeal for assistance rests on the following substantial considerations:

1. The Barrett companies' proven potential as a leader of and example for American business, especially minority-owned and operated.
2. The potential for development of a substantial number of trained, productive urban laborers in a currently underutilized urban economic sector.
3. The inequity of the circumstances surrounding the demise of the Barrett companies, and the hardship suffered by Mr. Barrett and his family personally.
4. The potential for substantial federal assistance with virtually no cash expenditure.
5. The support of a number of individuals willing and prepared to participate in the companies' redevelopment if proven economically viable.
6. The large existing demand for the primary product, the Sequerra Model I.

U.S. Small Business Administration
Washington, D.C. 20416

OFFICE OF THE
INSPECTOR GENERAL

FEB 16 1983

Mr. Frederick E. Barrett
President
Quadratech Research Corporation
3000 Durid Park Drive
Baltimore, Maryland 21215

Dear Mr. Barrett:

I am writing in response to your letter dated January 17, 1983, requesting disclosure of information under the Freedom of Information Act.

Pursuant to 5 U.S.C. 552(b)(7), public disclosure provisions of the Act do not apply to investigatory records compiled for law enforcement purposes, to the extent that the production of such records would interfere with law enforcement proceedings. Your request for a copy of the investigative report on Quadratech Research Corporation, therefore, cannot be honored at this time due to the fact that this matter is still under active investigation by this Office. Upon completion of our investigation, we may be able to provide you with the information you have requested. I would suggest therefore, that you re-submit your request to this Office in 30 days.

Should you deem this reply unsatisfactory, you have a right to appeal the decision to Mr. Nicholas Kalcounos, Director, Freedom of Information/Privacy Act Office, at the Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416. Your appeal should contain a description of the information you requested, the name and place of employment of the SBA official who denied the request, the reason(s) cited for the denial and such other pertinent facts as you deem appropriate.

Sincerely,

Raymond F. Randolph
Acting Inspector General

EXHIBIT 7

Mr. MITCHELL. Thank you, very much, Mr. Barrett. I do have a number of questions, but I very much would like to hear Mr. Ramsey's testimony next before we get into questions.

TESTIMONY OF WALTER RAMSEY, PRESIDENT, RAMS-HEAD CONSTRUCTION CO.

Mr. RAMSEY. Mr. Chairman, Congressmen, ladies and gentlemen, it would be in my best interests to read my brief.

Mr. MITCHELL. Sure.

Mr. RAMSEY. My name is Walter Ramsey, and I am president and chief executive officer of Rams-Head Construction Co., located in Queens, N.Y. We are a small business general contractor certified to receive subcontracts from the Small Business Administration as a disadvantaged firm pursuant to section 8(a) of the Small Business Act.

H.R. 863 is a remarkable piece of proposed legislation. It is remarkable because it attempts to bring objectivity into a program, for instance the 8(a) program, which has suffered, and have subjected its private sector participants to severe hardship due to its present callous and often consciously abusive and arbitrary subjective administration at the hands of the Small Business Administration.

I am here to detail only one such story, Rams-Head. My counsel, however, can relate numerous cases over a wide geographic area covering varied enterprises.

Because of H.R. 863's noble purpose, I must support it, but I would do so with some suggested changes. With your permission, I would like to briefly present the Rams-Head story to explain my suggestions.

In 1975, I was president of the Southeast Queens Jamaica Chapter of the NAACP. The Veterans' Administration had undertaken the St. Albans Veterans' Administration Hospital project. The hospital is in a predominantly black area.

Minority contractors felt that they were being unfairly excluded. Picketing of the project began followed by rioting. The situation was deteriorating rapidly with a high potentiality for serious violence.

To achieve a fair resolution, the VA and the SBA suggested that the Queens minority group form a general contracting organization that was bondable and certifiable in the 8(a) program. Thus, Rams-Head was born.

I'm an electrical engineer, and I was operating a small electronics business. I joined with a white electrical contractor, who had a $5 million bonding line. We, in turn, were joined by my present secretary-treasurer, Mr. Mel Barth, who was an experienced general construction contractor. I owned 51 percent of the company, and managed day-to-day operations.

It was understood that our immediate purpose was to take on St. Albans project through the 8(a) process, and distribute much of the work to the local Queens minority contractors. In this regard, we were certified in an inconceivably short time of 24 hours. The southeast Queens group ceased its sit-in at the New York City SBA offices, and the first 8(a) project, a St. Albans canteen job, was

awarded. Following that award, and under the scrutiny of SBA's Mr. Segrew from its New York district office, subcontract awards went to the southeast Queens minority group.

While Rams-Head's principals gave up their individual businesses at the request of the Government, and out of a strong sense of community responsibility, I would be remiss if I did not admit that we desired to build within the auspices of the 8(a) program a strong minority general contractor.

We not only wanted to be an asset to the community, but to realize reasonable returns for risking our livelihood. While we did help establish racial and labor peace as desired by our Government, because of subjective, callous, and arbitrary actions of SBA and VA bureaucrats, actions which are not readily addressable by the legal process as neither the Small Business Act nor the proposed legislation provides for the responsibility of such bureaucrats when they violate the spirit and even the letter of the law, Rams-Head is on the verge of total collapse, our livelihood has in fact been lost, and our personal lives subjected to severe trauma.

In order to meet our first objective, a distribution of work to the Queens minority group, Rams-Head under the supervision of the SBA, and in particular Mr. Segrew, awarded sole source subcontracts. These contracts were at prices that invariably exceeded those possible through competitive bidding, but the local minority community was benefiting and learning. The VA was getting St. Albans built, and racial healing was proceeding.

Rams-Head received commendations from the VA, but was not allowed to realize the profits required for a viable future. The SBA, in fact, only cared about Rams-Head as a convenient vehicle to maintain racial peace.

As examples, Rams-Head found that certain of the minority subs felt little responsibility for their contracts. To cure this, Rams-Head desired bonding back from known delinquents. The SBA, however, frustrated Rams-Head's efforts telling the minority subs that such bonding back to an 8(a) firm was not necessary.

While this perhaps was technically correct, at the same time SBA was directing the use of the particular subcontractor, giving it the details on Rams-Head's total price, and the amount that Rams-Head had established for subs.

Thus, it was impossible because of the SBA for Rams-Head to establish contingencies intended to cover delinquent uncovered subcontractors. This resulted in Rams-Head's profits being devoured in correcting subcontractor defaults. SBA personnel who partook in such activities included Mr. Segrew and Mr. Ben Torrent.

Throughout this entire period, 1975 through 1979, Rams-Head was not supported by the SBA in receiving work to fill its yearly work program. In virtually every instance, Rams-Head had to secure reports of planned projects, and "market" itself for the work. More favored 8(a) participants were presented projects by the SBA. Sometime however in 1979, the Army Corps of Engineers was ordered to begin a pilot program aimed at expanding the use of minority enterprises in DOD contracting.

I was called into Mr. Segrew's office, and told to take what amounted to a soil erosion control job on a water system located near Buffalo, N.Y. Rams-Head was told to take the job, or be ex-

cluded from new work. The job is now near completion, but Rams-Head has lost substantial sums, and has been forced to submit large claims, and was refused even minimal SBA support vis-a-vis the Army. At the last meeting, some SBA help was promised, but nothing was developed.

In January 1981, Rams-Head now operating near Buffalo identified a corps job on an Indian reservation. The job was well performed. The Army called the SBA to request Rams-Head on additional projects. Through this contract, however, Rams-Head got the first word of impending disaster.

The new New York District Director, Mr. Jesse Quigly, advised the Army's, Mr. Don Stewart not to discuss additional work because Rams-Head was under criminal investigation. The "meaner-than-a-junkyard-dog" boys with their usual finesse, had come on the scene, but no one had told Rams-Head.

Mr. Barth called SBA personnel Quigly, Sanchez, and Diaz. All denied any knowledge of the criminal investigation, and Quigly denied his conversation with Stewart.

Our bank called, however, and informed us that due to the criminal investigation, the company's credit line was canceled. This was around March 1981. In January 1982, we learned that we were under criminal investigation. We have learned since through Freedom of Information requests—and that should be January 1982 by the way—that the investigation had been underway at that time for about a year.

It was not until August or September 1981 through the chief of engineering at the Brooklyn VA that we learned more. The investigation was by the VA Inspector General in the person of Mr. George Fisher of the Atlanta Office.

The SBA continued to deny that they knew of Mr. Fisher's work. However, records of his work obtained under the Freedom of Information Act showed contacts with SBA personnel, and we know of the SBA's contract with the Army in January 1981. Rams-Head was not awarded a single 8(a) contract during the Fisher period, although it continued to market work. Since its credit line had been eliminated by Fisher's meddling, Rams-Head's financial position was beginning to crumble.

On one job, Rams-Head marketed an electrical job, and the VA requested award to Rams-Head. The SBA refused, and began negotiations with a Brooklyn contractor. Negotiations with the Brooklyn contractor broke down, and minority problems were reappearing at St. Albans.

Rams-Head, although by now in a serious financial situation, took the job by finding an electrical contractor who could finance until a progress payment allowed Rams-Head to meet payroll. That was the only job that Rams-Head had received since the start of the criminal investigation.

Today Rams-Head is destroyed. Mr. Barth and I face an extremely uncertain future.

As a last-ditch attempt to save Rams-Head, we had marketed a medical gas job at the Brooklyn VA, and a laundry at St. Albans. This was in the latter part of 1979. The VA supported Rams-Head originally for the medical job.

The VA contacted the SBA about the work, but were told by Mr. Sanchez and Mr. Diaz that Rams-Head was to be decertified, apparently because of the investigation. Further, Mr. Fisher had contacted Rams-Head's principal subcontractors. This frightened the subcontractors, who like the banks then refused to extend credit. Rams-Head appeared finished.

What of the investigation? In the winter of 1981, a huge report was produced, and presented to a U.S. attorney, Mr. Mark Sumner. He returned the report with the comment that there was no evidence of criminal wrongdoing. With that knowledge, Rams-Head returned to the VA for the medical gas job.

The VA refused on the basis that the report still showed three paperwork discrepancies. With the help of counsel, Rams-Head was able to debunk these last discrepancies. The VA still refused to specifically endorse Rams-Head, but agreed that the job would be ours if the SBA would award.

The SBA through its callous arbitrary treatment of Rams-Head during an uncalled-for malicious and spurious I.G. investigation have put Rams-Head, its peacemaker at St. Albans, in a noose. Now certainly was the time to take action in the spirit of the Small Business Act and the 8(a) program to provide Rams-Head a last opportunity to survive.

In its moment of glory around the middle of 1982, the SBA in the person of Mr. Sanchez and Mr. Diaz denied the very existence of the medical job. In a frenzy, we held various meetings at the Washington level at both the VA and the SBA.

We also enlisted the help of the committee staff members who, with this committee, had been instrumental years before in solving the SBA's race problems. Through the aid of the committee, we eventually came to a meeting with the New York District Director, Harry Tishelman. We were told that he was a fair and objective man, and we had great hopes. Mr. Tishelman turned out to be the man who finally destroyed Rams-Head.

We explained the whole plight to Mr. Tishelman. He listened politely. He told us that we could have the medical job if we could get evidence of bonding, get a written statement from the subcontractors on earlier jobs that they would not sue or interfere with the new work, and show how cash would flow for the first 4 months.

We told Mr. Tishelman that we had oral understandings with the subs, but if forced to go to writing, these understandings would break down. We reminded him that the Government had created the problem in the first place, that the Rams-Head principals had risked their future to aid SBA in the first place, and now was the time for the SBA to provide real help.

He made it clear that the past had not occurred on his watch, and that he couldn't care less. We felt that it was impossible, but we went forward to meet his requirements. We were given 2 weeks. Miraculously, a bonding agent provided a letter stating that he would bond.

We met with the subcontractors, and although their lawyers refused to let them agree to Tishelman's demands, they did sign letters saying that they planned no immediate action. We provided data showing how working with the subs, cash flow would be handled until progress payments were sufficient to do the job.

We took the bonding commitment letter to the VA, and it was agreed that it was sufficient. We returned to Tishelman, even though that we had heard in the interim that Tishelman had an assistant call the bonding agent, tell him of his doubts as to Rams-Head's financial capabilities, and suggest that he not bond.

Tishelman insulted the VA for accepting the bonding letter, but let that stand. He refused to accept the subcontractors' statements, and added a new criteria for certifying financial data. The bottom line was that we were not able to get the medical job.

We again enlisted the help of this committee's staff members. A meeting was held where new work was promised, but none came. Finally, out of sheer desperation, our counsel wrote a letter to the President. Mr. Sanders answered directly to our counsel, which resulted in a roundtable meeting in New York with Mr. Neglia, the Regional Director.

Mr. Tishelman, Ms. Sanchez, Mr. Diaz, and others all attended. Mr. Neglia personally promised new work. While he defended Mr. Tishelman's requirements under normal circumstances, he agreed that this was an unusual case, and that the spirit of the Small Business Act required some substantive SBA help.

That same day, Mr. Diaz called with an Air Force roofing job. In separate discussions with our counsel, Mr. Diaz confirmed the understanding at the meeting that to be eligible, Rams-Head would only have to show bonding and cash flow. Further, that there would be no additional support until Rams-Head could overcome the effects of SBA's neglect, combined with VA's officious intermeddling. No contracts resulted. Tishelman returned to his hard line, and Rams-Head is now almost certainly beyond help.

Messrs. Tishelman, Fisher et al. are safely tucked away in the bosoms of their families, and most likely cannot even be touched by legal processes. They have provided nothing of a constructive nature, but only destructive redtape while living off the fat of the land.

I, and Mr. Barth, who desired to and did provide substantive help to the community, have been economically ruined in the face of legislation designed specifically to help those who would help themselves.

H.R. 863 for all of its obvious values would not prevent another Rams-Head. Only if the bureaucrats can be made personally responsible, can they be convinced to act responsibly. It is not necessary that they be held liable financially or, in most situations, have their jobs at risk.

It would be sufficient if a government-wide procedure available only to small business, and similar to the Defense Department's boards established under Public Law 85-804 be provided so that the spirit of the Small Business Act, the 8(a) program, and the objectivity of H.R. 863 could be assured. These boards operating separate and apart from the low level bureaucracy and at levels high enough to be effective could weed out the chronic complainers, provide help to those deserving, and suggest discipline of lower levels only when those levels have violated law or regulation, or have been sufficiently arbitrary and callous as to require reminding that they work for, and do not control, the public.

Mr. MITCHELL. Thank you, Mr. Ramsey, for your statement.

Mr. Wallace, tell me specifically——

Mr. RAMSEY. If I may make one correction——

Mr. MITCHELL. Yes.

Mr. RAMSEY. Let me read this paragraph. "H.R. 863 remedies providing due process hearings to correct abuses are, of course, a giant step in the right direction." The difficulty is the time and cost involved. Further, H.R. 863 remedies are aimed at reversing bottomline results needing graduation or termination.

I would like to suggest an interim method more convenient and less expensive for raising bureaucratic consciousness prior to terminal crisis.

That statement should be added. Thank you.

Mr. MITCHELL. Mr. Wallace, what specifically were you under investigation for? What were the allegations?

Mr. WALLACE. Congressman, the best lawyers in this country have not figured that out yet, except, as I said, it was economic racism. It is just that they wanted to kill the project, and to put me under investigation, and knowing that my banks would not lend me that kind of money anticipating me going to jail. They never could give me a specific reason. They have never, nor my lawyers,

Mr. MITCHELL. I understand that you were attempting to build an oil refinery in Alabama. Is that correct?

Mr. WALLACE. I was building an oil refinery in Alabama, and it was a joint venture between SBA and Wallace.

Mr. MITCHELL. What was the attitude of the SBA toward that particular project? It was supportive in the beginning.

Mr. WALLACE. In the beginning?

Mr. MITCHELL. Yes.

Mr. WALLACE. Oh, yes. It got so bad because I was a spokesman for the 8(a) program, and particularly for the large Fortune 500 companies, and it got so bad that I could not do all of the work that SBA wanted me to do. They even leased a private jet for me to be able to take care of my business and SBA's business. So we were getting along fine until, as I stated in there, the Carter administration when they changed the way that they felt about the project. It worked.

Let me give you an example, Congressman. I remember one day about the excess equipment, I was called down to the Defense Department, and there was someone from the GSA, I think a Mrs. Rosenberg, and a representative from the SBA and the Defense Department. They said that it was in the best interests of the Government to build this refinery, and that I would get all of the excess equipment that was available.

It worked perfect. I mean that I could call up any GSA installations in this country, and the equipment that I wanted, was there; it would be put on a train, or a ship, and it would be headed to Tuskegee within minutes. The delivery worked beautiful until it got too big for my competitors.

Mr. MITCHELL. Well, you said that it got to be too big several times.

Mr. WALLACE. Right.

Mr. MITCHELL. That is a very interesting point, because in your testimony, you refer to a statement made by a former Deputy Administrator of the SBA, "SBA is not in the business of making

Exxon's out of minority firms. We are in the business to assist mom and pop stores."

Now if that statement is accurate, and I assume that it is, here is clear-cut illustration that for a minority firm in the SBA program, it is exceedingly difficult to reach out and become competitively viable in other than the traditional businesses.

Mr. WALLACE. That is correct, Mr. Chairman. When Mrs. Clarity, who made that statement, and with the change of attitude of the SBA—remember before that time, the SBA wanted success of getting minorities into the Fortune 500. They encouraged it. They worked with us, but it was just a change of administration. When that happened, a lot of us went down the drain.

We recall old Nixonites, and everything else. We are not going to do anything for you. You supported Nixon. It was incredible what happened to me and other minorities, who tried to do something, and tried to create jobs for my people, and there was no question.

They would come back with old sayings saying well, you do not need another refinery. I said you do not tell Cecil Buck not to build another department store where Macy's has one. You know, do not tell me that. You do not tell the Japanese to build another assembly line.

I would not care if the day that my refinery came on stream if Exxon went out of business. It is competition, as far as I am concerned.

Mr. MITCHELL. I just want to try to sum this up, if I can. You were under some sort of investigation for 5½ years, and it was a criminal investigation. That investigation is now terminated according to the U.S. attorney's letter to your counsel saying that they found no evidence of any criminal wrongdoing.

You spent approximately $750,000 in lawyers' fees over that period according to your testimony. You are now no longer in the 8(a) program.

Is that correct?

Mr. WALLACE. In name only. I am one of the ones that they put out. In name only, but they have not set aside for 2 years.

Mr. MITCHELL. You have had no contracts during the 2-year period?

Mr. WALLACE. No contracts.

Mr. MITCHELL. During this entire process that went on for 5½ years did you ever appear before any administrative board, tribunal, or court with regard to the investigation?

Mr. WALLACE. No.

Mr. MITCHELL. You never appeared before a SBA administration board, or anything like that?

Mr. WALLACE. They flatly refused.

Mr. MITCHELL. Let me do it another way then.

Were you ever given any opportunity to stand before any duly constituted body to contest what was being alleged in the investigation?

Mr. WALLACE. They flatly refused. I tried to get them to get me a hearing. They would not do it. They still today will not. They do not want to make this public.

Mr. MITCHELL. Thank you.

Mr. Barrett, yours is a similar experience. Yours went on for about 2½ years.

Mr. BARRETT. Five years, sir.

Mr. MITCHELL. Five years.

What were the specifics of the allegations or the charges?

Mr. BARRETT. To this date I have not even been charged with anything.

Mr. MITCHELL. But the investigation has continued?

Mr. BARRETT. Yes, sir, so they say. What happens there is that once the word is that there is an investigating body looking into your company, everybody takes a handsoff approach, and nobody looks at you at all except the investigators. This has been going on for years without any charge whatsoever.

Mr. MITCHELL. Have you had any opportunity to appear before any administrative board in the SBA, or any judicial body or quasi-judicial body, to give your responses to the allegations?

Mr. BARRETT. No opportunity was afforded to me.

Mr. MITCHELL. Have you requested that?

Mr. BARRETT. I have requested it repeatedly. However, they have denied that opportunity. Under the premise that the matter was under investigation.

Mr. MITCHELL. You are still under investigation?

Mr. BARRETT. Exhibit 7 in my testimony is a letter received February 16, which says that this matter is still under active investigation; 5 years without a charge. Now that is un-American.

Mr. MITCHELL. Have you initiated any legal action against the SBA?

Mr. BARRETT. I initiated legal action against the SBA in 1979 for $40 million in damages. At the end of the Carter administration they looked at it, and said oh, my God. They decided to settle with me for $9.5 million resuscitation which involved funds from other departments of the Government.

Then the Carter administration lost the election. The new Reagan administration, simply stopped anything that was in progress at that time. I have given up my counterclaim, which was of compelling validity, and it is also included as part of the record in there, that this matter was of compelling validity, but that I gave it up in hopes of the resuscitation. Nothing has come of that. I am now left without the suit as well as without the resuscitation as was promised.

Mr. MITCHELL. You said that as a general practice that once word gets out about an investigation, then the doors close.

Mr. BARRETT. Yes, sir.

Mr. MITCHELL. That is the banks, and the bonding companies, and so forth.

Mr. BARRETT. Yes.

Mr. MITCHELL. But you have started a new company?

Mr. BARRETT. Yes.

Mr. MITCHELL. Where did your financing come from for that new company?

Mr. BARRETT. We started a new company in Baltimore, because Mayor Shaeffer and the Baltimore Economic Development Corp. reviewed the situation, and thought that there was some unfair-

ness there. They decided to help me to get my award-winning product on the marketplace.

They have given me some access to financing through loans and loan guarantees, which have been helpful in getting us started, but that is the only financing that we have been able to get. Because all other efforts from the private sector, whenever an inquiry is made to the SBA, the SBA says that we are still under investigation, and that simply frightens them all away.

Mr. MITCHELL. Now you refer to your product as a fine tuner, and you say that it won awards.

Mr. BARRETT. Yes, sir.

Mr. MITCHELL. What kind of awards?

Mr. BARRETT. Our product in 1968 was elected for the design excellence award from the American Design Institute in Chicago. In 1979, it was given a state of the art award by the Japanese for the finest product of its kind in the world. That award continues to this day unchallenged, and it still is the finest product of its kind.

We are making it under very adverse conditions by hand.

Mr. MITCHELL. By hand?

Mr. BARRETT. By hand. All of our machinery and equipment was auctioned off by the SBA. So as a result, we have to be making it now by hand. I have asked some of our employees, members of the community, to come here today from Park Heights, Baltimore, to show their support. I do not know whether they have arrived yet. So that you would be able to see that they are working under very adverse conditions. The SBA continues to keep us in hostage by not giving us any assistance whatsoever.

Mr. MITCHELL. How many people do you presently employ?

Mr. BARRETT. Eleven, sir.

Mr. MITCHELL. Eleven.

Mr. BARRETT. I had 149 people in the plant before the SBA; I am down to 11 now.

Mr. MITCHELL. Mr. Ramsey, how long did your experience persist? Five years or more?

Mr. RAMSEY. No, it is not 5 years. It is roughly around 2 to 3 years. We do not know when it had started. That is the problem. We do not know when it started.

Mr. MITCHELL. During the 3 to 3½ years, have you ever appeared in a hearing before any review board of the Small Business Administration, or any quasi legal-judicial body to try to respond to whatever these allegations are?

Mr. RAMSEY. None whatsoever. The only thing is that I was called by Mr. Fisher. I spoke to him in a private session, in which he tape recorded my statements, and that was all. But there was no hearing as such. Everybody denied that there was any investigation, even though he called me subsequently, and said that he wanted to get some statements from me.

Mr. MITCHELL. Has your attorney ever instituted court action or something to try to resolve this for you?

Mr. RAMSEY. Not to date.

Mr. MITCHELL. Your attorney has not instituted an action?

Mr. RAMSEY. Has not made a request to date, no.

Mr. MITCHELL. You are unable to tell this committee what you are being investigated for?

Mr. RAMSEY. We never really. A criminal investigation sir, they said. One of the questions that Mr. Fisher asked me at the time, he said you offer a $1,000 bribe to anybody, and I said no. I said I have no knowledge of such a thing. He asked me that.

The only thing that we were accused of was we tried to bribe him.

Mr. MITCHELL. Bribe who?

Mr. RAMSEY. Bribe him.

Mr. MITCHELL. Mr. Tishelman?

Mr. RAMSEY. No, Mr. Fisher.

Mr. MITCHELL. Mr. Fisher; all right.

Mr. RAMSEY. Because in speaking to him, I said, would you like some coffee and cake, and he said that is a bribe. I never heard of such a thing.

Mr. MITCHELL. All right. The other things that really intrigues me, and causes me to be most sympathetic to you is the facility with which you gained 8(a) certification.

Based on my experience, it has taken as much as 9 months or more with me working with some companies trying to get them 8(a) certification. Now when you were called in to sort of calm the waters up there in New York, the St. Albans situation, did you say that you were given 8(a) certification in 24 hours?

Mr. RAMSEY. Yes, it came very quickly. We had a severe riot situation in 1975 and 1976. It was very bad.

Mr. MITCHELL. Yes, I recall.

Mr. RAMSEY. We had people tearing things to pieces. It was almost going to be like Washington. In order to prevent that, we were certified to get contracts.

Mr. WALLACE. The same thing happened to me.

Mr. MITCHELL. We have got three people, all of whom have relayed an experience of a minimum of 3 years up to 5 years of investigations with no review, and no chance to address the accusers, and no court action. In Mr. Wallace's case, court action was not apparently necessary since the U.S. Attorney General said that they found no evidence of any criminal wrongdoing.

Mr. RAMSEY. The same thing happened, if you will notice in my statement, the same thing.

Mr. MITCHELL. From my vantage point, it is obvious that the features of due process that we have put into H.R. 863 are desperately needed. I just think that there has got to be a better method of handling cases of this sort.

Mr. RAMSEY. I brought something to your attention. I suggested there probably is a little better way of handling this.

Mr. MITCHELL. I did note your recommendation of a possible change.

Mr. RAMSEY. Thank you.

Mr. MITCHELL. Mr. Addabbo, do you have any questions?

Mr. ADDABBO. Thank you, very much, Mr. Chairman.

I wish to welcome these three responsible businessmen. As they have testified, and I have known over the years, they have been harassed to the point where it nearly put them out of business. It appears that when a minority businessperson starts to move ahead,

and takes a step ahead of the crowd, and starts to become a viable competitor, suddenly from all sides, roadblocks are put in his way.

One of the problems with these cases, and a point that this committee has expressed on several other occasions, is that the Small Business Administration, instead of complying with the original law which directed them to be the advocate and helper of the small business is actually one of the perpetrators. It tried to push these minority businessmen down a cliff of failure, rather than advocating their interests with other Federal agencies. SBA has much more clout than a simple businessperson who must spend thousands of dollars—which he does not have—because he is working on such a small margin. That is part of the bureaucracy's system of destroying them, knowing that they cannot endure lengthy investigations and court actions because of the high cost of attorneys.

I want to commend Mr. Wallace, Mr. Barrett, and Mr. Ramsey for taking the initiative to fight the system, and staying in there. It has cost them much anguish, a great number of dollars, and great embarrassment. Mr. Wallace was hailed in the New York Times as one of the most successful minority business people in history. All of a sudden he became too big for some people; he was surrounded daily by auditors.

Charlie, how many times did the same auditors or the same type of auditors come into your shop?

Mr. WALLACE. Congressman, I was constantly audited by some agent except the Internal Revenue. They have been awful nice. They came over to help me instead of hurt me. That is a change.

The whole 5 years I have spent over $10,000 alone photostating records. I tore up a couple of Xerox machines just photostating. Every day I had to give somebody something. I got mad and told them, look, I am not going to photostat every day until eternity. Come out here, and look in my office. You can have a statement. Sign a statement that you will not steal anything, and you can stay here. So they finally came out, and they sent some brain damaged person out there. They did not even know how to look at general ledgers. So we just gave them the general ledger, and they looked at one, and walked away. So that was the end of it.

Mr. ADDABBO. Can you give me a ballpark figure how many times they were in and out of your office disrupting your operations?

Mr. WALLACE. I would say 400 or 500 times. They just came every time we turned around. We had either to tape them something, or they would bring it, or something. Let me tell you another trick that they would play. You would not believe it. Part of what they told me was the criminal investigation, they told my attorneys, that there was a summary sheet that I had given to them on some figures. We would send them a financial statement, and they would immediately lose that financial statement.

We have sent the same financial statement to SBA as many as 10 to 15 times. They say, well, we misplaced it. Well, we will give you another one, and we would photostat it. They would misplace that one. I would say I am not going to give you another one, do what you want to do.

I mean that is the kind of harassment that they do. You send documents down there, and they would immediately throw them

away, or misplace them, and say well, I did not get it; from Washington to the grand jury.

Every time that somebody would come to my aid like a black bank in Cleveland who came to my aid, and they made a loan to me. They immediately had the U.S. attorney and the Cleveland FBI come into this bank, and ask for those records, and demanded those records to come back to New York.

When they got them there, they did not even open them. It was just harassment. They did not even look at them.

Mr. ADDABBO. Not only were they harassing you, but anyone who did business with you?

Mr. WALLACE. Anyone who did business with me, they harassed them. When the utilities came over to my aid. As you know, and Congressman, you now know about my case more than the average person, let me give you an example. When I went out to sell this refinery to White American, they had to buy the oil. OK, the SBA played the numbers game that I talked about, played the numbers game. Say $113 million in business; that is over a period of 10 years.

OK, I signed one contract with a utility for $1 billion. So during this refinery, we signed $6.5 billion worth of contracts to compensate for what SBA was doing. You see, SBA was my partner. So we said we will go out, we do not need you to do anything but give us support.

Because I spent more money helping the SBA than SBA helping themselves. Because I was the spokesman for SBA through both the white and black community. I sold it. A lot of the Fortune 500 companies today who have a minority program, have it because of my encouragement that they ought to do this. I even sold it to the OPEC countries helping minorities.

The OPEC countries were helping me. So I was able to invest the OPEC money for about 10 days when I would sell a shipload of oil to a utility. So the whole thing worked from one side. But what really happened is that they did not like me going over and making ties with the Third World. Now they totally disagree with that, and made it clear. And again, it did not go with political lines, whether it was Carter, or Reagan, or anybody. They just did not care. It was just too much power for a black man to behold in this country. That was the problem. We can call it anything we want to call it. It just got too big for them.

Mr. ADDABBO. Mr. Wallace, actually most of your troubles started when you started moving ahead, when it appeared that your refinery may come on line, when you were able to start dealing with foreign nations buying crude oil in competition with many of our major companies?

Is that correct?

Mr. WALLACE. Well, it is correct in part, and I will explain what happened. As you know, it is difficult to build a refinery, whether you are Exxon or Wallace, because of the involvement, studies, and so forth. What they were doing is they came to me at a time when there was black unrest.

I was certified in 24 hours. I had a contract in the next 24 hours. They had to do something, and they used me to do this. So I had to quiet the black community, talking them out of taking North Caro-

lina as a State for black people; so that was my job to get out there and do that.

So I did that very well. Then they said let us keep on teasing him, because nobody can build a refinery in this country. So as they began to keep on laughing at me, I kept on running. You know, you cannot win a race laughing.

So when I got my financial study out, and it was approved by my lead bank, which was Chase. Chase said I am sorry, Wallace, I cannot go more than one-half billion dollars in this project, so I said fine. Then we sent the financial plan to SBA. It went to the White House.

They were coming back saying Wallace's figures are wrong, but somebody wised up. What we did was we tricked them. I had my people come up with their projection. I came up with my projection. Then mine was lower, and theirs was higher. But the Department of Energy had a program that projects refineries. We bought the program for $125, and went directly on their projections.

So if they said that my projections were wrong, they would have to have said that the whole Department of Energy was wrong. So then I still had them turn it. Then they said the way that we can destroy this whole thing is to start a criminal investigation.

Once that happened, nobody was going to lend somebody one-half billion dollars and whatever; they may go to jail tomorrow, so they kept it. What made it bad was that they kept it until the statute of limitations ran out; plus I was extended the 6 months.

They said well, Mr. Wallace, we want to look at something else, and they would come up with something so ridiculous, and we spent it.

Mr. ADDABBO. Charlie, what university did you graduate from?

Mr. WALLACE. I have no education whatsoever. I barely got through high school, I was so poor.

Mr. ADDABBO. In other words, you built up a business with the help of SBA and all of your knowledge came from the grassroots, working with and within the system. When you grew too big, SBA no longer was your advocate. They became an adversary to you, and tried to diminish your business wherever they could. Is that correct?

Mr. WALLACE. That is correct, and let me just expand on this a little bit. When they said we have to have a success of a minority getting into the economic mainstream, of this country within the Fortune 500. So they came to me, and they said Wallace, can you do this? I said, I think I can. I said what can you do to create a lot of jobs, massive jobs? I said that a construction of a refinery will create more jobs in the short run and faster than anything else that I know of.

This tells you how green SBA and I were on a refinery. When I called on the refinery, the guy said wait a minute, before you even talk about a refinery, let us see if you have announced the thing right, Wallace. I said OK.

So I went down there, I got on the plane, and came down here. I said do you know what a refinery costs to build? They said no. I said at that time it was $350 million. I got to have at least 15 percent of that. The highest bank account that I ever had in my life was one-half million dollars. There is no way that I can do this.

They said well, Wallace, you can do that. They said I do not care, do it, you can do it. So I got back on the old Electras that we used to ride on, and went back to New York. We circled about 4 or 5 hours, and I thought about Japan and excess Government equipment, which would give me the use value, which would give me $18 million.

They said I will give you $10 million on the thing. The excess equipment will give you use value of $18 million. That is $28 million. We need $35 million. And, Wallace, we are going to give you a proper contract, and we can get the other $10 million. And we took over like a house of fire.

It went good until that. Now we did through with site preparation and all of the software. And we can, and we will build it. It is just a stumbling block. I have no intention of changing my mind getting that refinery now, ever, or 3 days after eternity.

Mr. ADDABBO. Charlie, and Walter, and Mr. Barrett, what can you suggest to prevent these abuses in the future? The chairman has mentioned the legislation that we are proposing to move through, and hopefully get passed.

What else can this committee do, or what should be done by the SBA to protect small minority business such as yours, so that this will not happen to others that follow you?

Mr. WALLACE. Well, this bill goes a long ways in trying to make sure that we get due process of law. You see, I do not think that I or any other 8(a) kid cares about being accused. This is the difference between our country and theirs. We have a right to accuse. Accuse me of anything you want to, but just get on with the accusing, and let me have due process of law.

I think that we can defend ourselves. I can defend myself against any criticism that may come from anybody. But I think that one thing that we are going to have to do—even the Justice Department got totally angry with the SBA for sending me over to be investigated.

They said that they are not in the business of doing this. But we have got to have some kind of bill that will stop SBA from criminally investigating minorities when there is no merit whatsoever. This is what we have got to do.

I do not know how you do that. You know, I felt like getting a baseball bat and doing it. But I do not know any way of doing it legally. But it has got to start here, because that is a misuse of Government power.

Let me tell you what else they have done. Now I won a $44 million contract with the Defense Department. I was low bidder this year. The Justice Department told the Defense Department that it was not in their best interests to do business with Wallace, and I did not get that contract.

I had been serving that installation for 10 years. SBA had made special trucks to deliver. I was qualified. They said they will give me credit, they still said that it was not in the best interests. Now we are suing them, because I take nothing from no man, you know.

Like they say, I am not a dog, I wag my tail to no man, but we will make sure that we will fight them. I can fight them. But what about the poor people who cannot fight them. They will devastate

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those guys. I will make it. You know, put me in jail, and I am out of jail 6 months, and they will pay me rent.

You know, I am that kind of an individual, but the other poor people cannot make it, especially behind this criminal investigation bull with no merit whatsoever. They should go to jail. We are trying to put them in jail, too. I can guarantee you that.

Mr. RAMSEY. Mr. Addabbo, I may have a suggestion here.

Mr. ADDABBO. Mr. Ramsey.

Mr. RAMSEY. I am not a lawyer. But I think that it is an American principle that a person is innocent until proven guilty. That fact that you have an investigation means nothing unless you can prove something is wrong. Therefore on that basis, the SBA should in some way be prevented from doing anything out of the ordinary, take contracts away from people, or deprive them of any economic advantage in the 8(a) program unless and until the criminal investigation proves guilt on the part of the party.

Now Mr. Wallace has a good point. He has money at his command, or had. I do not know how much he has now, but he had money at his command anyhow in which he could actually fight this through the courts. A person like me cannot. It is devastating.

Therefore, I made a suggestion in my proposal here that we do something that is done by the Department of Defense. You can have a group of people who can actually come and review with no cost to the complainant about such actions, and thereby take the SBA or any other agency to task.

This enables you to get justice immediately without having to wait to go through the process of the courts. If it cannot be done then, if it cannot be resolved then, then your last resort is to go to the courts. But that provides the means by which a poor firm without cost can stop the SBA from doing things of this type.

Mr. ADDABBO. Thank you.

Thank you, Mr. Chairman.

Mr. MITCHELL. Mr. Barrett wanted to respond, and then we had a question from the other side.

Mr. BARRETT. Yes. As you know, I headed a regulatory agency in Washington for 1½ years, and I was very, very much aware of the power of the Government, in that it should be isolated from the individual by the due process provisions. In my opinion, the SBA is an administrative agency that has recently begun to act in a regulatory mode without the proper regulatory safeguards. Before any kind of action can be taken by an agency, it must go through the administrative review. and administrative hearings through an administrative law judge, and then the proper sanctions imposed.

If that is not done, you will find bureaucrats beginning to make decisions which adversely affect people's lives, and with the due process being thrown out the window, anarchy sets in.

Another thing that caused that to occur is you must remember that the inspectors general were recently appointed by the Carter administration. It was the opinion at the time that the inspectors general were appointed that they felt that they exceeded the law.

They were able to direct the field offices to impose sanctions quickly, and everyone took it for granted that the inspectors general had this authority when they really did not. It was not until

after they found out the mess that they were making that the inspectors general then began to recognize the due process.

So the "junkyard dogs" jumped the fence, and bit some people in the street. Now somebody has got to correct that problem.

Mr. MITCHELL. Thank you.

Mr. McDade.

Mr. MCDADE. Thank you, Mr. Chairman. I am sorry, I came in late. I obviously missed some of the testimony of the gentlemen on the panel. But what I am hearing, if I understand correctly, that there is a concerted effort on the part of SBA to harass and put out of business, if they would, minorities.

Mr. WALLACE. No question about that. No question whatsoever.

Mr. MITCHELL. If you could yield to me just a minute.

Mr. MCDADE. Yes.

Mr. MITCHELL. I got a slightly different impression. That minorities when they reached a certain point of development, rather than just all minorities. It seemed to me just when they started getting big. That was kind of the thrust of it.

Mr. MCDADE. I would like to expand upon that. In other words, it is not just the question of discrimination against minorities, but as a minority business begins to grow into a larger size, that is when you experience the kind of problem that you have been relating to us here today.

Is that a fair statement?

Mr. WALLACE. In my case. They started harassing at an early age. I have seen them, in my statement, if you read it——

Mr. MCDADE. I have read part of it.

Mr. WALLACE. That I was the spokesman, and they called me for certification. God knows, I have seen them mistreat poor guys in the beginning. To give you a good example. The first contractor that I got from the St. Albans Hospital, which he related in his testimony there, I had to threaten to burn the trucks to get that contract, because the bureaucrats just did not want to bump up.

I had to go to SBA, and get 8(a) certified, and break through redtape. That was my job. They do not devastate you when you are small. But when you get large, that is where you get devastation, these criminal investigations, and other innuendos.

You know, that you as a Congressman cannot get involved with somebody who is under criminal investigation. They used the Justice Department, and used other Federal agencies as a coverup. I made it clear here, and I made it clear in the courts, as a coverup.

You get too large, or too big for them, or do not do what they say, they can use it for a political football. If something happens in the black community where you can put out some fires, then boy, you begin to catch holy hell from SBA. The very agent that is there to protect us.

Mr. MCDADE. But the same thing does not occur to others who are not minorities. Is that what you are telling the subcommittee?

Mr. WALLACE. They are not on 8(a). They are not supposed to be, but a lot of them get in through the back door. But they are not supposed to be on 8(a). It is supposed to be strictly minorities.

Mr. MCDADE. But they have made some through the back door, you are telling me?

Mr. WALLACE. Yes, sir. I found them, and I pointed them out, and we picked them out. That was my job.

Mr. MCDADE. What was the nature of the criminal charges that were levied against you, are you able to talk about that?

Mr. WALLACE. Yes. After spending $750,000, I do not know. Your guess is as good as mine. I was black and ambitious, and was building a refinery. We can go further. It is as simple as that. It was economic racism.

Mr. MCDADE. Were there any formal charges levied against you, or any documents delivered to you outlining any charges?

Mr. WALLACE. No, they did not deliver anything. The best that we could get was misuse of the Government's money. That is the only thing that they could hang on.

Mr. MCDADE. Are those charges still pending?

Mr. WALLACE. They have been dropped.

Mr. MCDADE. They have been dropped.

Mr. WALLACE. I was completely exonerated of any wrongdoing. That did not bring back my good name, bring back my family. We were investigated. Even my dog was investigated. I am going to tell you the truth; I mean this is a fight. They wanted to know if I was homosexual, did I have other women, did I drink, did I smoke. I mean they put the whole works out on me. I do not drink, and I do not smoke, and I am strictly a family man. They said he went home to bed at night at 6 o'clock with his wife, and that is the only thing. I mean this is what they do for nothing when they get ready to destroy you.

Mr. MCDADE. Let us try to get it a little more specific, if we can.

Was there one individual who was in charge of this investigation of you, who oversaw the investigation?

Mr. WALLACE. In a criminal investigation, you do not know what is happening. You have a right for a speedy trial, but you have no rights in a criminal investigation.

Mr. MCDADE. Did you meet with any investigator?

Mr. WALLACE. I met with no one. My lawyers did. After it was bumped up to the U.S attorney.

Mr. MCDADE. How long did this go on?

Mr. WALLACE. For 5½ years.

Mr. MCDADE. During the course of that time, did your business stop?

Mr. WALLACE. No, my business did not stop, but it was severely crippled.

Mr. MCDADE. What state are you in now with respect to your business?

Mr. WALLACE. Well, my business will survive. We have a tremendous cash flow problem because of the SBA. The oil business in this part of the winter, is no good at all. So I had a double whammy. We will survive. Thank God, the large, white corporate utilities still wish to buy from me. They did not believe in this thing.

They know how honest I was. They know that it was a bunch of junk. They did not pull away from me. As I stated here before on the record, SBA and the Justice Deaprtment stopped the Defense Department from doing business with me. They illegally did that, saying that I could not finance it, when the OPEC countries agreed to finance the oil and money. But we are going to deal with them

in the proper form. I cannot discuss that here, because it will be in the court. You see, I will sue them. I will sue anybody if they mess with me, and that is what happened.

Mr. McDADE. You have provided a lot of work for lawyers, I guess.

Mr. WALLACE. SBA did.

Mr. McDADE. Thank you. I have no further questions.

Mr. WALLACE. Thank you, sir.

Mr. MITCHELL. Thank you again, gentlemen. Obviously, nobody on this committee can speak of issues which are alleged to be criminal behavior. We are not privy to those allegations. I think your concern is due process: Whether or not the accused has the right to appear before the accuser within a reasonable period of time; whether or not, simply, an investigation would cause all support programs to be terminated. I think that is arbitrary; that is where we are focusing.

Thank you, very much. We are running a little late. If you can stay awhile, we will try to come back to you if we can. We are a little behind schedule. Thank you, very much, gentlemen. I appreciate it.

On our next panel we have Robert G. Haldeman, Jr., president of Zeta Services, Inc., and Arnold Jackson, director of Ferguson Bryan.

Gentlemen, I make my usual apology. To ask you come and spend a day in Washington always hurts your business, whether it is a big business, or a small business. But we are really most appreciative of the fact that you did take time to come to appear before this committee.

Mr. Haldeman, would you lead off. We have copies of your testimony. And the entire testimony will be submitted for the record. If you so desire, you can just go through and pick out your 10 or 12 major points that you would like to make.

Mr. Haldeman.

PANEL CONSISTING OF ROBERT G. HALDEMAN, JR., AND ARNOLD A. JACKSON

TESTIMONY OF ROBERT G. HALDEMAN, JR., PRESIDENT, ZETA SERVICES, INC.

Mr. HALDEMAN. Thank you. I would like to say just for the record that although my name is Bob Haldeman. I am no relation to any previous administration official. I am putting you on notice that I am recording this.

I would like to begin with a brief statement of the problem with which I am concerned: That is who should and who should not have access to the benefits of the 8(a) program. To date, there has apparently been no problem in determining individuals who qualify for entry into the 8(a) program.

However, this program has been disappointing to most observers. From October 1978 when the capital ownership development program was established to the present, no firm can be said to have graduated from this program.

That is, no evaluation system has ever been instituted which could determine that an 8(a) participant had so benefited from the

capital ownership development program and the special procurement policies from 8(a), that it no longer needed special treatment afforded by that program.

My five objectives in appearing before you today are: First, to show that the SBA's failure to graduate any firms is quite rational in light of the language of section 8(a)(6) of the Small Business Act. Second, to show that the FPTT's—or any devices designed to limit the time spent in the 8(a) program—are in conflict with the criteria for eligibility established by section 8(a)(6).

Third, to suggest a new approach toward eligibility in the 8(a) program that is consistent with the intentions of section 8(a)(6). Fourth, to outline a fair, reasonable, consistent, and defensible system for graduating section 8(a) firms. And fifth, to identify the benefits of this proposed system.

The first thing that I would like to do is to talk about section 8(a)(6), and make four points. Please refer to section 8(a)(6).

[A copy of the handout follows:]

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Section 8(a) (6)

To quote from House of Representatives' Report No. 97-956 (pp. 14-15): "Section 8(a) (6) of the act defines an 'economically disadvantaged individual' as a **socially disadvantaged** person 'whose ability to compete in the free enterprise system has been **impaired** due to **diminished capital and credit opportunities** as compared to others in the same business area who are not socially disadvantaged.'" **[Emphasis supplied.]**

Section 7(j) (10)

Section 7(j) (10) states that the Capital Ownership Development Program shall: "**Assist** small business concerns participating in the program to **develop** comprehensive business **targets, objectives,** and **goals** for correcting the impairment of such concern's ability to compete, as determined for such concern persuant to section 8(a) (6) of this act **within a fixed period of time** as mutually agreed upon by the applicant and the administrator prior to acceptance into such program...." **[Emphasis supplied.]**

Exhibit 8.—SBA point system for determining fixed program participation terms

Economic disadvantage (maximum 620 points):	*Points awarded*
1. Personal assets (maximum 20 points)	
2. Business assets (maximum 20 points)	
3. Personal net worth (maximum 200 points)	
4. Business net worth (maximum 200 points)	
5. Personal income (maximum 30 points)	
6. Business income (maximum 30 points)	
7. Business profits (maximum 40 points)	
✓8. Access to credit and capital (maximum 40 points)	
9. Bonding capability (maximum 20 points)	
✓10. Availability of outside equity capital (maximum 10 points)	
11. Available markets (maximum 10 points)	
8(a) support factor (maximum 20 points)	
Non-8(a) support factor (maximum 20 points)	
Length of time factor (maximum 5 points)	
Advance payment factor (maximum 5 points)	
BDE factor (maximum 5 points)	
Reliance upon program support factor (maximum 40 points)	
Grand total (maximum 715 points)	

Scale

0–150 points, 4–5 years.
151–250 points, 3–4 years.
251–325 points, 2–3 years.
326–375 points, 1–2 years.
Over 375 points, 1 year–18 months.

Source: SBA, Standard Operating Procedure 80-05.

Mr. HALDEMAN. The first point deals with eligibility. You will notice that the statute limits participation in 8(a) to the economically disadvantaged. Then the statute sets up a test for economic disadvantage. To be considered economically disadvantaged, an individual must be socially disadvantaged, and must have an impaired ability to compete because of diminished capital and credit opportunities as compared to other firms or other individuals wh are not socially disadvantaged.

Let me repeat. Eligibility in the 8(a) program requires only tv things: One, Social disadvantage, and two, diminished credit ar capital opportunities.

The second point about 8(a)(6) regard legislative intention. The legislative intention behind 8(a) was clearly to allow individuals without access to traditional sources of capital and credit to build their own capital and credit resources.

This is an interesting and insightful concept. No other economic deficiency was specified. The law was literally designed to create capitalists from among the economically disadvantaged. Equity capital was to be built through preferential treatment in contract procurement, and in some cases, through subsidies of as much as 15 percent of the contract amount. Acquisition of equity capital would then lead to creditworthiness, which in turn would allow firms to borrow debt capital.

The third point of that 8(a)(6) is that it sets up a relative standard. The socially disadvantaged must only establish that their access to capital and credit is diminished compared to individuals who are not socially disadvantaged.

While I know of no empirical study on the subject, it is quite likely true that minorities have diminished access to capital and credit as supplied by banks, finance companies, insurance companies, investment bankers, and the capital markets in general.

Since there is nothing in the foreseeable future that will make this access exactly equal, it is likely that the socially disadvantaged will continue to be economically disadvantaged according to the test of access to capital and credit.

The fourth point about section 8(a)(6) is that it sets up criteria for both entry into and exit from the program. It is a matter of law that entry into the program requires economic disadvantage, that is, both social disadvantage and diminished access to capital and credit.

Symmetrical application of the law requires graduation, when at least one of the entry criteria has been removed. Since it is quite likely, as was just mentioned, that minorities have diminished capital and credit opportunities for the foreseeable future, few if any of the firms in the 8(a) program qualify for graduation. By symmetrically applying the test of economic disadvantage, the rather assymmetric situation results in which firms enter, but no firms exit. The SBA to date has simply administered the law the way that it was written!

I would like to move now to the subject of the proposed FPTT system, which seems to conflict with 8(a)(6) in two ways. First, there is nothing about the passage of time that corrects the conditions of social disadvantage or diminished access to capital and

credit. Neither 3 years nor 5 years nor unlimited time will remove the disadvantaged as it is defined by law.

Second, the SBA's point system for setting FPTT's does not focus on the statutory test of diminished access to capital and credit. You may want to refer to the House of Representatives Report 97-956, exhibit 8, which presents the SBA point system.

If you will look there, you will see that only 2 of the 17 line items deal with the access to capital and credit question: Item 8, which is access to credit and capital; and item 10, access to outside equity capital. These two items represent 50 of a maximum of 715 points totaling only about 7 percent of the total.

While items 1 through 7, and item 11—with a maximum weight of 550 points—would be relevant to the test of access to capital and credit, they should be viewed as subparts in the main test rather than having importance unto themselves.

Item 9 and the items following item 11 on the worksheet, which represent 115 points, seem to me to be irrelevant to the question of capital and credit.

Whether the members here like it or not, I think that the proposed SBA FPTT's and the point system for setting them do not focus on correcting the 8(a)(6) requirement of economic disadvantage. Having identified these inconsistencies, I would like to propose a new concept for interpreting 8(a)(6). What is needed is a standard that can be applied to socially disadvantaged seekers of capital that is not relative, affords realistic criteria for eligibility, and yet supplies a reasonably objective standard for graduation. I believe that that standard is bankability. A firm is said to be bankable when a bank approves that firm's loan application.

If the socially disadvantaged, nascent capitalist has insufficient capital, and is unable to get bank support for his projects, he can apply to the 8(a) program. If accepted to participate in the program, his firm would be monitored for signs of improved economic vitality. Graduation from the program would come at the point when the firm is judged capital of obtaining adequate bank financing.

The truest test of whether the 8(a) program has created capital is whether a bank would be willing to lend sufficient money for the participating firm's needs. The loan should not require a guarantee or cosignature by the SBA or another party unrelated to the principals. I do feel that requiring the firm's principals to personally guarantee the loan, and pledge personal assets as collateral certainly are consistent with the term bankable.

I believe that the proposed standard of bankability can be economically administered without creating a new mountain of bureaucracy. This can be accomplished through the process of electronic data processing, and recent developments in standardized credit risk measurement.

There are six requirements for an operational system. First, well-prepared financial audited statements. Second, an electronic financial statement database for the 8(a) firms. Third, a rigorous, empirically based, statistically valid, unbiased credit screening tool. My firm, by the way, provides such a product which is called the ZETA credit score. There may be others that can do it, too.

The fourth requirement would be a small staff of analysts trained in bank lending and credit analysis. These I will call credit professionals.

Fifth, a blue ribbon panel consisting of the chief credit officers of major money center banks.

Sixth, a willingness by the SBA to use the system.

The system consisting of these elements would operate as follows. Initially, historical financial statements for 8(a) firms would be prepared and put into the financial database. This database would be updated continuously as new financial statements are received.

The financial statements would then be processed through the rigorous, empirically based, statistically valid, unbiased credit screening tool to produce a credit score for each of the firms in the database.

The credit score would then be sorted from highest to lowest to provide the first step toward determining which firms are bankable. Firms scoring in the top 10 percent, or if you choose the top 20 percent, or the top 25 percent, however you wish to define it, would then be subjected to an indepth review by a member of the staff of credit professionals.

The credit professional would have access to computer output showing the credit scores and other important financial information. At this point, the credit professional would investigate the intangible factors and interview the firm's principals, if necessary.

Among the factors that the credit professional would consider are management strength, management depth, marketing strength, geographic and demographic factors, financial controls, and forecasting ability for the firm.

After a thorough review of the quantitative and qualitative aspects of the 8(a) firm under review, the credit professional would make a recommendation whether this firm could obtain bank financing sufficient to meet the operating requirements of its non-8(a) business. If he felt that the firm was bankable, he would pass it on to the final level of review, the blue ribbon panel of chief credit officers. This blue ribbon panel, perhaps serving at a dollar a year, would meet quarterly for 1 or 2 days to review the files of the firms recommended for graduation. The panel would then affirm or overrule the judgment of the staff credit professionals.

There are six major benefits to this proposed system, but I will not go into them in great depth. The first is fairness. The second is reasonableness. The third is consistency—using this system would mean a high degree of reliability. Fourth, It is a defensible system that uses both quantitative and qualitative techniques to evaluate the firms.

Fifth, there is a minimum administrative cost, because of the electronic processing of data that greatly reduces the work involved, and sixth, there is a maximum likelihood of success by the graduates.

There are a number of ancillary benefits, which I will skip now. They are listed on page 6 of my written testimony. Except for the eighth, which points out that you can review not only the top-scoring firms, because you have ranked them from high to low, but you can take a look at the low-scoring firms. And if a firm persists to be a very low scoring company year after year after year, you

might decide that this firm really does not have much potential for success, and that it might be eliminated from the program on a failure-to-thrive basis.

I have four conclusions: First, the FPTT's suggested by the SBA appear to be in conflict with the statutory basis for including firms in 8(a).

Second, the language of 8(a)(6) should probably be revised to remove the relative standard for participation. A more objective standard should be devised, although I believe that the emphasis on capital formation should be retained. That is the soul of 8(a)(6).

Third, the SBA's point system for determining FPTT's is not properly focused on the standard of access to capital and credit.

Finally, that the system outlined herein provides the SBA with at least one alternative for evaluating 8(a) firms that is responsive to the spirit of 8(a)(6), and provides a fair review of participating firms.

I would like to conclude with a comment. I have read quite thoroughly the House of Representatives Report 97-956. The minority members of this committee strenuously object to what they feel is the majority's attempt to guarantee the business success of 8(a) firms. I share their feeling that such success in business cannot be guaranteed.

The bankruptcies of Wickes Cos., in business for nearly 50 years, and W. T. Grant, in business for 80 years, demonstrate that the passage of time certainly does not guaranteee business success. However, accepting a firm into the 8(a) program creates an obligation on the part of the SBA to provide the services and support required by the law.

The assertion that nowhere in the legislative history is it suggested that the 8(a) program is intended to create viable businesses is at odds with the definition of economic disadvantaged in section 8(a)(6). The correction of economic disadvantage is certainly no guarantee of success, nor even is the concept of bankability.

Bankers can be wrong. As a prime example, before its failure, Wickes Cos. had access to all manner of capital and credit, and ran up a tab with its bankers of approximately $2 billion. Thank you.

[Mr. Haldeman's prepared statement with attachments follows:]

PREPARED STATEMENT OF ROBERT G. HALDEMAN, JR., PRESIDENT, ZETA SERVICES, INC.

THE PROBLEM

With an institution as rich with "issues" as is the Small Business Administration (SBA), it requires some courage to sit before you and pontificate on one of that instituttion's thorniest problems: Who should and who should not have access to the benefits of the 8(a) program?

The purpose of the 8(a) program, in conjunction with the Capital Ownership Development Program, is to give "economically disadvantaged individuals" an opportunity to build capital and develop entrepreneurial management skills while owning and operating businesses. To date there has been apparently no problem in determining individuals who qualify for entry into the 8(a) program. However, the 8(a) program has been disappointing to most observers. From October, 1978, (when the Capital Ownership Development Program was established) to the present, no firm can be said to have "graduated" from the program. That is, no evaluation system has ever been instituted which could determine that an 8(a) participant has so benefited from the Capital Ownership Development Program and the special procurement policies of the 8(a) program that it no longer needs the special treatment afforded by 8(a).

OBJECTIVES OF THIS TESTIMONY

My objectives in appearing here before you today are:

1. To demonstrate that the SBA's failure to graduate any firms is quite rational in light of the language of section 8(a) (6) of the Small Business Act of 1953.

2. To show that section 8(a) (6)'s criteria for exiting the program are in conflict with section 7(j) (10), 13 C.F.R.§124.1-1(f) (which establishes FPPT's) and the SBA's point system for determining FPPT's.

3. To show that section 7(j) (10) and 13 C.F.R.§124.1-1(f) are in conflict with each other.

4. To suggest a new approach for admitting firms to and graduating them from the 8(a) program. The new approach is based on the apparent intention of section 8(a) (6).

5. To outline a system that would provide a fair, reasonable, consistent, and defensible basis for graduating 8(a) firms persuant to this alternative interpretation of section 8(a) (6).

6. To outline the benefits of such a system.

THE SBA'S FAILURE TO GRADUATE ANY 8(a) FIRMS

To quote from House of Representatives' Report No. 97-956 (pp. 14-15): "Section 8(a) (6) of the act defines an 'economically disadvantaged individual' as a socially disadvantaged person 'whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.'"[Emphasis supplied.]

This statute targets the individuals who are to benefit from the 8(a) program. By definition, qualifying as an "economically disadvantaged individual" has only two requirements: First, the individual must be "socially disadvantaged" as defined by 13 C.F.R.§124.1. Second, the individual must have an "impaired" ability to compete "due to diminished capital and credit opportunities...."

Two points should be made about the second requirement. First, the legislative intention behind the 8(a) program was clearly to allow individuals without traditional access to capital and credit a chance to build their own capital and credit resources. No other economic deficiency was specified. No mention is made of sales, profits, or growth rates. The law was literally designed to create capitalists from among the "economically disadvantaged." Second, the statute made a comparison between "socially disadvantaged" individuals whose ability to compete was diminished due to lack of capital and credit and others who were not similarly "socially disadvantaged." While I know of no empirical study on the subject, it is quite likely true that minorities have diminished access to capital and credit as supplied by:

1. Banks
2. Finance companies
3. Insurance companies
4. Investment bankers
5. Capital markets in general

There is nothing in the foreseeable future that will make this access exactly equal. Hence, it is likely that the socially disadvantaged will continue to be economically disadvantaged according to this insightful test of accesss to capital and credit.

It seems that, as a matter of law, section 8(a) (6) provides requirements for both entry into and exit from the 8(a) program. Entry into the program requires an individual to be both socially and economically disadvantaged. Exit from the program requires that at least one of the entry criteria be removed. Since we are concerned here mainly with the criterion of economic disadvantage, and since it has been assumed that, generally speaking, minorities will have diminished credit and capital opportunities for the foreseeable future, few, if any, of the firms in the 8(a) program qualify for graduation.

Conclusion: By symmetrically applying the criteria of social and economic disadvantage, the rather asymmetric situation results in which firms enter, but no firms exit. The SBA has simply been administering the law as it is written.

CONFLICT BETWEEN 8(a) (6), 7(j) (10) and 13 C.F.R.§124.1-1(f)

In attempting to establish an exit procedure, SBA has devised a point system to assign FPPT's (time limits) for 8(a) firms. Two aspects of this system are at odds with section 8(a) (6). First, no minimum or maximum time period established by 13 C.F.R.§124.1-1(f) (and supported by statute section 7(j) (10)) corrects the conditions of social and economic disadvantage defined in 8(a) (6). Second, the SBA point system that sets the FPPT's does not focus on the statutory test of diminished access to capital and credit. Only 2 of 17 line items (item 8: Access to credit and capital; item 10: Access to outside equity capital) deal with access to capital and credit.

These two line items represent 50 of a maximum of 715 points, or only about 7% of the total. While items 1 - 7 and 11 (maximum weight 550 points) would be relevant to the test of access to capital and credit, they should be viewed as subparts of the main test rather than having importance unto themselves. Item 9 and the line items following item 11 on the worksheet (representing 115 points) seem irrelevant.

Conclusion: SBA imposed FPPT's and the SBA point system for setting them do not focus on correcting the 8(a) (6) requirements of social and economic disadvantage.

CONFLICT BETWEEN 7(j) (10) and 13 C.F.R.§124.101(f)

Section 7(j) (10) states that the Capital Ownership Development Program shall: "Assist small business concerns participating in the program **to develop** comprehensive business **targets, objectives,** and **goals** for correcting the impairment of such concern's ability to compete, as determined for such concern persuant to section 8(a) (6) of this act **within a fixed period of time** as mutually agreed upon by the applicant and the administrator prior to acceptance into such program...." **[Emphasis supplied.]** This is the basis for 13 C.F.R.§124.1-1(f) which established FPPT's.

Conclusion: Although the legislative intent may have been different, the statute does not appear to require or authorize fixed completion dates for program participants. The language of the law requires only the **business targets, objectives, and goals be developed within a fixed period of time.** It is silent about when these targets, objectives and goals must be attained.

TOWARD NEW CRITERIA FOR ADMISSION INTO AND EXIT FROM THE 8(a) PROGRAM

The SBA's practice of not graduating firms from the 8(a) program, although seemingly consistent with section 8(a) (6), has drawn heavy criticism from the GAO, the Congress (which has attempted to force graduation through legislation), the Federal Administration (which has sought to force exit through FPPT's), and others. With so many detractors, I am emboldened to suggest a different approach.

The legislative intent of 8(a) was clearly to encourage firms to build equity capital which would in turn lead to credit worthiness. Credit worthiness would then allow firms to borrow debt capital. Equity capital was to be built by use of Federal procurement contracts which could be subsidized by as much as 15% of the fair market contract price.

The key to 8(a) is access to capital and credit. Unfortunately, section 8(a) (6) has created a relative standard for access. To gain entry into and remain in the program, the socially disadvantaged must only establish that such access is diminished, even if only slightly disminished, relative to those that are not socially disadvantaged.

What is needed is a standard that can be applied to socially disadvantaged seekers of capital that is not relative, affords realistic criteria for eligibility, and yet supplies a reasonably objective standard for graduation. I believe such standard is "bankability." Bankable means acceptable to or at a bank. It generally refers to acceptance by a bank of a potential borrower's loan application.

If the socially disadvantaged, nascent capitalist has insufficient capital and is unable to get bank support for his projects, he could apply to the 8(a) program. If accepted to participate in the program, his firm would be monitored for signs of improved economic vitality. Graduation from the program would come at the point when the firm is judged capable of obtaining adequate bank financing. The truest test of whether the 8(a) program (in conjunction with Capital Ownership Development Program) has created capital is whether a bank would be willing to lend sufficient money for the participating firm's needs. The loan should not require a guarantee or cosignature by the SBA or another party unrelated to the company or its principals. I do feel that requiring the firm's principals to personally guarantee the loan and pledge personal assets as collateral are consistent with the term bankable. A small businessman's corporate assets are often times nearly indistinguishable from his personal assets.

A SCENARIO FOR IMPLEMENTING THE PROPOSED STANDARD

I believe the proposed standard of bankability can be economically administered without creating a new mountain of bureaucracy. This can be accomplished through the magic of electronic data processing and recent developments in standardized credit/risk measurement. There are six requirements for an operational system:

1. Well prepared, audited financial statements.

2. An electronic data system for gathering, coding, verifying, storing, and retrieving financial statement information about 8(a) firms.

3. A rigorous, empirically based, statistically valid, unbiased credit screening tool. [My firm delivers such a tool to its subscribers. That tool is called a ZETA score.]

4. A small staff of analysts trained in bank lending and credit analysis (credit professionals) who will investigate firms thought to be nearing bankability.

5. A blue ribbon review panel consisting of chief credit officers of major money center banks.

6. Willingness by the SBA to embrace the system.

A system consisting of the above elements would operate as follows: The need for well prepared, audited financial statements should be self-evident. (Accounting information is the soul of financial decision making.) Initially, historical financial statement data for 8(a) firms would be prepared and input into the financial data base. The financial data base would be updated continuously as new financial statements are received from participating firms. The financial statement data would be

processed through the rigorous, empirically based, statistically valid, unbiased credit screening tool to produce a credit score for each firm in the data base. The credit score would be sorted from highest to lowest and would provide the first step toward determining which firms are bankable. Firms scoring in the top 10% (or top 20% or top 25%) would be subjected to an in-depth review by a member of the staff of credit professionals. The credit professional would have access to computer output showing credit scores and other important financial information as well as each firm's financial statements.

At this point, the credit professional would investigate the intangible factors and interview the firms' principal(s), if necessary. Among the factors he would consider are:

-Management strength

-Management depth

-Marketing strength

-Geographic/demographic factors

-Financial controls

-Forecasting ability

After a thorough review of the quantitative and qualitative aspects of each 8(a) firm under review, the credit professional would make a recommendation as to whether the firm could obtain bank financing sufficient to meet the operating requirements of its non-8(a) business. If not, the credit professional would issue a brief report indicating the nature of the elements that require improvement. If he felt the firm was bankable, he would pass it on to the final level of review, the blue ribbon panel of chief credit officers.

The blue ribbon panel, perhaps serving at a dollar a year, would meet quarterly for one or two days to review the files of firms recommended for graduation. They would then affirm or overrule the judgment of the staff credit professionals.

You may notice that I have, until now, not emphasized the need for SBA co-operation. This co-operation is essential to the successful completion of this or any other system for reviewing the 8(a) participants.

BENEFITS OF THE PROPOSED SYSTEM

Major Benefits

1. Fairness. Each firm graduated from the system would have a thorough analysis of its chances of obtaining capital and credit in the free market.

2. Reasonableness. Essentially the same process is undertaken that is used in the corporate banking community.

3. Consistency. Use of a credit scoring model introduces a high degree of reproducibility in the credit decisions and minimizes arbitrariness.

4. Defensibility. Credit models have been empirically tested and in many respects are superior to bond and trade credit ratings. The analysis of intangibles avoids the possibility that the credit model was given bad information or could not properly evaluate certain off balance sheet information.

5. Minimum Administration Costs. Use of a statistically based credit model saves thousands of hours of calculations and provides a quick reliable method of ranking companies by their credit strength.

6. Maximum likelihood of business success by graduates. The scrutiny of both objective and subjective factors by several levels of credit professionals assures that 8(a) graduates have obtained enough capital to survive reasonably well.

Ancillary Benefits

Several ancillary benefits could be derived from an automated financial data base and credit scoring system.

1. Reports could easily be generated to help measure the effectiveness of the Business Development Specialists and Contract Negotiators. Summaries could also be made for districts and regions.

2. A small enhancement to the system could compare 8(a) firms' performance with the predetermined goals of the business plan (as mandated by 7(j) (10)).

3. The capability to forecast credit scores based on business plan projections could be added. This would help to identify "high potential" firms.

4. Credit scores could be used to group 8(a) firms by financial strength for the proposed tier program.

5. All manner of descriptive statistics could be calculated from modest additional information about the firms. Data about industries, distribution of employees between minorities and non-minorities, officer salaries, employee salaries, the mix of 8(a) and non-8(a) business would be available for analysis on an individual, district, regional or national basis.

6. Similar descriptive statistics and financial information could be maintained for 8(a) alumni. This would allow for feedback and adjustments to the program.

7. Compiling important statistics for internal use or external publication at regular intervals as short as quarterly or monthly would be relatively easy.

8. The review process could analyze firms that are candidates for exclusion from the program because they are not making upward progress.

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CONCLUSIONS

1. The use of FPPT's by the SBA appears to conflict with the statutory basis for including firms in 8(a).

2. The language of 8(a) (6) should probably be revised to remove the relative standard for participation. A more objective standard should be devised.

3. The SBA's point system for determining FPPT's is not properly focused on the standard of access to capital and credit.

4. The system outlined herein provides the SBA with an option for evaluating 8(a) firms which is responsive to the spirit of 8(a) (6) and provides a fair review of participating firms.

COMMENTS

The minority members of the Committee strenuously object to what they feel is the majority's attempt to guarantee the business success of 8(a) firms. I share their feeling that success in business can't be guaranteed. The bankruptcies of Wickes Companies (in business for nearly 50 years) and W.T. Grant (in business for nearly 80 years) demonstrate that the passage of time certainly does not guarantee business success. However, accepting a firm into the 8(a) program creates an obligation on the part of the SBA to provide the services and support required by law.

The assertion that "nowhere in the legislative history is it suggested that the 8(a) program is intended to create viable businesses" is at odds with the definition of economic disadvantage in 8(a) (6). The correction of economic disadvantage is not a guarantee of success. Nor even is the concept of bankability. Before its failure, Wickes Companies had access to all manner of capital and credit and ran up a tab with its bankers of $3.5 billion.

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WORK EXPERIENCE

ZETA SERVICES, INC.
Mountainside, N.J.
12/78 - present
President and owner. Responsible for all facets of company operations. Company's purpose is to service clients of the Zeta® Service.

DONALDSON LUFKIN & JENRETTE SECURITIES CORP.
New York, New York
10/77 - 12/78
Security Analyst. Responsible for marketing, customer maintenance and system maintenance of Zeta® Risk Evaluation service.

WOOD, STRUTHERS & WINTHROP, INC.
New York, New York
6/75 - 10/77
Security Analyst. Conceptualized, designed and implemented the Zeta® Risk Evaluation model. Subsequently, marketed and maintained the system.

ARTHUR ANDERSEN & CO.
New York, New York
6/73 - 6/75
Staff Accountant (C.P.A.) responsible for various audit and administrative services assignments.

9/68 - 9/71
Various sales and teaching assignments.

EDUCATION

Columbia University Graduate School of Business
Master of Business Administration, May 1972
Concentrations in Finance and Accounting
Beta Gamma Sigma
Organized and presided over GSB intramural athletic club

Amherst College
Bachelor of Arts, June 1968
Major in Chemistry
Varsity Football: 3 letters
"A" Team Rugby: 3 letters; Heydt Memorial Rugby Football Award
Beta Theta Pi: Vice President, Pledge Master

MISC.

Listed in Outstanding Young Men of America 1980
President, Westfield Jaycees Inc. (1979-80)
Director, Westfield Community Development Corp. (1979 - present)
Co-author: "Zeta Analysis", Altman, Haldeman and Narayanan. Journal of Banking and Finance Vol. 1, No. 1.
Member, American Institute of Certified Public Accountants
Member, New York Society of Certified Public Accountants

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Finance

CORPORATE FINANCE

Companies that face financial strain

Business failures are surging. During the first three months of this year, an average of 448 companies a week went belly up, compared with just 299 a week for the same period last year. "That's easily the highest number since the early 1980s," says Rowena Wyant, vice-president of the Business Economics Div. of Dun & Bradstreet Inc., which compiled the figures. The roster includes bigger and bigger companies in all types of industries. In recent weeks such well-known concerns as Wickes Cos. (homebuilding), Spector Red Ball (trucking), Saxon Industries (copiers and paper), and AM International (office equipment) joined the ranks of those in the bankruptcy courts.

What has lenders, trade creditors, and investors on edge now is simply, "Who will be next?" With the recession pummeling profits and interest expenses soaring at the same time, thousands of companies are vulnerable to serious financial strains. At best, such strains could compel them to slash dividends, default on interest payments, slow their payments to suppliers, or take big write-offs. At worst, troubled companies could be forced into bankruptcy.

To evaluate a company in distress, creditors typically scrutinize leverage, profitability, and liquidity ratios. Zeta Services Inc., a financial consulting firm based in Mountainside, N. J., has a more rigorous, computerized credit-scoring model, which takes seven key financial ratios into account. Its model comes up with a "Zeta score," a measure of a company's vulnerability to a financial pinch. Any score below zero suggests that a company may have trouble meeting its financial obligations.

Key financial ratios. This model, which since 1977 has been sold to banks and institutional investors, has been used by BUSINESS WEEK to identify large companies that could be in for trouble, particularly if the economy does not stage a vigorous recovery soon and if interest rates do not fall sharply. Zeta is a refinement of work done by Edward I. Altman, professor of finance and chairman of the MBA program at New York University. Altman, who dubbed his academic work "Z-score analysis," developed the proprietary Zeta version with Robert G. Haldeman, the president of Zeta Services. The model currently has more than 20 institutional subscribers and covers 2,600 public companies in the data base of Compustat Services Inc., a subsidiary of Standard & Poor's Corp.

In essence, the Zeta model adds up the key financial ratios, each weighted according to its importance as an indicator of financial health—or the lack of it. The weighting is based on the financial data of 53 manufacturing and retailing companies that between 1969 and 1975 either failed or were taken over by banks.

According to Haldeman, the ratio given the heaviest weight in the equation is one that measures cumulative profitability by dividing retained earnings by total assets. Two other ratios given heavy consideration are leverage and earnings stability. (The latter tracks earnings volatility during the past 10 years.)

Other ratios in the formula include return on total assets, fixed-charge coverage, and liquidity. A final variable, asset size, improves the Zeta score of bigger companies, which generally seem to have larger margins for error than smaller ones do.

The model is certainly not perfect. To be sure, it has successfully predicted all the major bankruptcies of the past few years. But it has also predicted the demise of scores of companies that did not, in fact, go under. Still, Haldeman points out, the overeager model has value in providing creditors with an early warning of financial trouble that, while not deadly, might impair a company's ability to pay bills and service debt on time.

The record. BUSINESS WEEK ran the model in March, 1980, and published a list of 24 companies that looked particularly vulnerable in the widely anticipated credit crunch. After that list ran, five of the companies filed for reorganization, including Itel, Seatrain Lines, White Motor, Penn-Dixie Industries, and Sambo's Restaurants. Ward Foods and Fed-Mart were bought out and made private.

This year, several companies are making a return engagement on the Zeta list, including General Host, Great Atlantic & Pacific Tea, Grolier, Genesco, and Kay. General Host's profitability—and score—has improved markedly, thanks largely to the disposition of problem businesses. But the company's debt, a hefty 62% of total capital, still drags its Zeta score into the danger zone. Genesco's divestitures of stores and other facilities have not improved its score

How one formula

The economic slump has savaged the order books and earnings of companies in such basic industries as steel, construction, autos, and heavy equipment. Meanwhile, many are under crushingly heavy debt loads. These companies are vulnerable to continued high interest rates and sorely need a robust economic recovery.

Manufacturing	12 mos. ending	Vulnerability by Zeta rating*
Diversified Industries (metals, smelting)	10/81	-5.82
Elcor (building materials)	12/81	-3.45
Alpha Portland Industries (cement)	9/81	-3.40
General Refractories (furnace linings)	12/81	-2.25
NVF (steel)	12/81	-1.42
International Harvester (farm equipment)	1/82	-0.76
Allied Products (fasteners, metal stamping)	12/81	-0.75
Condec (valves, robots)	1/82	-0.57
Wheeling-Pittsburgh (steel)	12/81	-0.26
Autos		
American Motors	12/81	-3.69
Chrysler	12/81	-3.55

*Scores were derived through a proprietary computer analysis called "Zeta," which gauges the financial condition of a company by consolidating the effect of seven important financial ratios that measure profitability, liquidity, and leverage. The largest negative numbers suggest the highest degree of vulnerability to financial pressures.

much, nor have such cutbacks saved A&P from having a lower score this time around. Grolier's debt, combined with a negative shareholders' equity, has kept its score in the nether regions, despite some earnings improvement. And the score of Kay Corp., a jeweler and commodities broker, has deteriorated.

Debt burdens. The list of companies with troubling Zeta scores is both longer and broader this year. The financial strength of airlines, retailers, and basic industrial manufacturers appears to have been damaged the most by the persistently depressed economy and by high interest rates. But wholesalers, resource companies, and office-equipment makers are not unscathed either. A majority of companies on this year's list tend to be losing money and are burdened by loads of debt that often tower at 60% and more of total capital, and they pay interest charges that average 11% to 18%.

Some companies indeed are at the brink. Auditors of Continental Airlines, Western Air Lines, and World Airways are questioning publicly those companies' ability to survive. Braniff International is pressing its lenders anxiously to agree to a debt restructuring—with an Oct. 1 deadline—to keep it aloft.

Not all of the companies listed, or even most, will actually go bankrupt. Optimistic creditors, in an effort to prop up their investments until the economy turns around, are tolerating missed payments and frequently plowing more money into sickly companies. General Refractories, International Harvester, and KDT recently found their bankers most accommodating in relaxing loan covenants on which these companies were in default. Transcon Inc., a trucker suffering from industrywide rate discounting and drooping demand, discovered that Continental Illinois National Bank & Trust Co. was only too happy to extend it a new $15 million credit line to replace that of its regular banks, which refused to increase their $10 million line. And Ramada Inns, whose overall earnings have been trounced by its recent money-losing forays into gambling casinos, is currently working with its banks on restructuring $500 million in debt, while United Merchants & Manufacturers is seeking to modify its loan pacts.

Government funds. Cash is coming from other, less conventional, sources that could help stave off serious financial hardship. Filmways and Allied Supermarkets received new cash infusions by selling shares to investor groups looking for an equity kick if and when the companies turn around. In April, the Canadian government, through its 49% ownership of Canadian Development Corp., purchased 57% of troubled Savin Corp. in hopes of getting into the "office of the future." The government plans to pump funds into the company, which has been losing money, to help it develop new products and, more immediately, introduce a new line of copiers.

Some companies are finding that employees, eager to protect their jobs, have been doing their part to keep their companies alive—accepting smaller compensation increases or even outright cuts. Labor concessions have been won by Wheeling-Pittsburgh Steel, International Harvester, the supermarkets, auto companies, and airlines. And 51% of Rath Packing, which has been losing money for years and has a very poor Zeta score, is now owned by its employees, who in 1979 agreed to accept stock instead of cash for part of their pay.

Many companies are slashing staff, shuttering draggy businesses, dawdling on paying bills, and selling off real estate, equipment, and underutilized facilities to save cash, or pay down some debt

rates companies' vulnerability

The falloff in consumer spending, because of the pinch on disposable income and rising unemployment, has seriously damaged the financial health of retailers, companies in food processing and distribution, and motel chains. The trouble is particularly pronounced in the Midwest, where the slump in auto sales has had a deeply depressing effect.

Retailing

	12 mos. ending	Zeta rating*
Pantry Pride	10/81	−6.99
Borman's	10/81	−3.91
Allied Supermarkets	9/81	−3.35
A&P	8/81	−3.25
Genesco	10/81	−2.69
Pueblo International	10/81	−2.35
KDT Industries	10/81	−2.31
Foodarama Supermarkets	1/82	−2.22
Cook United	10/81	−2.21

Food processing & lodging

Rath Packing	12/81	−11.00
General Host	12/81	−2.07
Ramada Inns	9/81	−1.93
United Brands	12/81	−1.48
American Bakeries	9/81	−1.48
Valmac Industries	12/81	−1.32

Data: Zeta Services Inc.

First-quarter operating losses for the airlines could soar as high as $700 million, more than they lost even in the last three months of 1981. Recession and flight restrictions, plus brutal fare wars, are to blame. Meanwhile, heavy debt taken on by some carriers in their zeal to expand, to acquire other airlines, and to modernize their fleets is further weakening balance sheets. Truckers, too, are being squeezed by rate competition, born of deregulation, and heavy debt loads.

Airlines

	12 mos. ending	Zeta rating*
Braniff International	9/81	−4.32
Continental	12/81	−3.10
Western	12/81	−3.05
Republic	12/81	−2.86
World	9/81	−2.59
Eastern	12/81	−2.49
PSA	9/81	−2.15
Pan American	12/81	−1.74

Trucking & air freight

Carolina Freight	9/81	−0.97
Transcon	12/81	−0.34
Tiger International	12/81	−0.03

Continued

while they wait for business to turn around. For some, the wait seems interminable. The protracted slump in new construction has saddled such companies as Elcor and Alpha Portland Industries with losses in the face of onerous interest charges. Demand for steel and steel products is in the pits, harming not only steelmakers such as Wheeling-Pittsburgh and NVF, which owns 86% of Sharon Steel Co., but also companies supplying the industry, such as General Refractories, which makes brick linings for steel company furnaces. Low farm prices and high interest rates have depressed the market for agricultural equipment—one reason why Harvester and Allied Products have such low Zeta scores.

Cost-cutting. The woes of the auto makers were clear well before the first quarter's net losses of $128 million. American Motors Corp., of course, can turn to Renault, its French partner and the owner of 46.4% of its stock, for financial aid. Chrysler Corp. has built up $895 million in cash, and vigorous cost-cutting has helped the company to halve its break-even point. But the company will be in deep trouble if auto sales do not pick up dramatically by next January. Ford Motor Co.'s financial shape is none too good either. Although the company's Zeta rating is not negative, as of last December it had fallen to +1.93, from +4.15 at yearend 1979.

Retailers, particularly those selling food, are having an especially tough time. Skimpy profit margins, typically no more than 1.5% of sales, leave retailers with little room for error. Business is so precarious that Pantry Pride and Allied Supermarkets—both fresh out of Chapter 11 reorganization—still look quite weak despite the easy debt terms they were handed when they emerged from court. In the Midwest, where unemployment in autos and related fields is staggeringly high, people are "buying down" and buying less, complains Donald J. Church, vice-president for finance at Borman's Inc., a Michigan supermarket chain. For some, sales troubles have been compounded by the caution of hard-pressed suppliers. KDT Industries Inc. (the former King's Department Stores), of Newton, Mass., is reported to suffer from empty shelves because some suppliers will not ship to the struggling company.

Certainly, there might be argument about just how close to the edge a particular company on BUSINESS WEEK's Zeta list really is and about its prospects for renewed fiscal vigor. The figures of several companies, such as Scot Lad Foods, Pantry Pride, and North American Coal Corp., seem to be improving, thanks to such varied factors as a new strategy, the disposition of problem operations, or the settlement of labor disputes.

Continued from page 111

Financial trouble looms for an assortment of other companies, including food wholesalers, distributors of office equipment, and natural resource companies. In many cases, profit problems are exacerbated by the cyclical nature of their businesses, vagaries of the markets, or labor strife. And costly debt does not give them much room to maneuver.

Miscellaneous Industries

Company	12 mos. ending	Zeta rating*
Fileways (books, films, TV programs)	11/81	−6.82
Grolier (encyclopedias)	12/81	−5.13
United Merchants & Manufacturers (textiles)	12/81	−3.55
Kay (jewelry, goods)	9/81	−3.08
Scot Lad Foods (wholesale food distribution)	12/81	−2.09
Crystal Oil (refining & exploration)	9/81	−2.06
Savin (copiers)	1/82	−0.96
Toro (snow blowers, lawn equipment)	1/82	−0.94
Arrow Electronics (distribution)	12/81	−0.60
North American Coal (mining)	12/81	−0.42
Talley Industries (clocks)	12/81	−0.42
Ponderosa System (restaurants)	11/81	−0.40
Singer (aerospace & sewing)	12/81	−0.27

Some companies, such as Crystal Oil Co., contend that their debt levels—backed up by valuable assets that can be liquidated for ready cash—are not so perilous as those levels seem to suggest. And North American Coal points out that most of its $623.4 million debt, which is a depressant on its Zeta score, is in its subsidiaries and argues that this debt should not be counted in a leverage ratio since the lenders have no legal recourse to the parent company's assets. Further, they say that debt is backed by either utilities or long-term contracts. Haldeman takes the position that while special situations may be open to interpretation, in general, a company should be viewed as a whole. The Zeta model uses consolidated information, in part because if subsidiaries run into trouble, they could be a drain on the parent.

Chagrin. Lenders and trade creditors really do not like to see a company go bankrupt, since they generally do not recover all the money they have out to the company. A debtor can be forced into bankruptcy by its creditors or may choose, on its own, to go into either Chapter 11, and gain a breather from its obligations, or Chapter 7, which involves a complete liquidation. Much to the chagrin of creditors, it is a lot easier these days for beleaguered companies to choose bankruptcy, and escape baying creditors. "You don't have to be insolvent to file a proceeding" under the bankruptcy law, explains Harold Jones, an attorney with the U. S. Justice Dept. "There's really nothing anyone can do to protect himself against a company's filing," which leaves creditors in the lurch. Suppliers to Saxon Industries, for instance, were surprised and furious when the company suddenly filed for Chapter 11—and a respite from bill-paying—after reporting three profitable quarters.

Although precise figures are hard to come by, some bankruptcy lawyers guess that fewer than half of the companies filing in bankruptcy court ever emerge from it and that not even all of those survive in the long run. Many, of course, emerge in quite a different form.

About the best strategy is to stay in close touch with lenders, for they are reluctant to write off a business. James D. Bonneville, vice-president of Toro, which is working through a two-year recovery program concocted with its 15 banks, says simply: "We have kept our losses where we thought they'd be, and as long as we continue in that mode, our bank relations are strong." ■

ZETA SERVICES INC.

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What is ZETA®?

ZETA® is a risk evaluation model developed by Zeta Services Inc. which examines various aspects of a firm's financial condition, weighs the importance of each one, and sums the weighted values. The unique index value created for each company is called its ZETA® score. The ZETA® model is both conservative and progressive in that it is based on time honored principles of security analysis and financial theory as well as recent developments in the field of statistical analysis.

How is Risk Defined?

For the development of ZETA®, risk was defined as the inability of a company to meet its obligations. The ZETA® score tells a user how much a company **resembles** firms that have been poor credit risks, i.e., firms that have recently filed bankruptcy petitions.

How Does ZETA® Control Risk?

ZETA® provides a risk or credit score that allows direct comparison of companies in different industries or within the same industry. It can also be used for comparing companies in the same or different bond ratings or to classify a private placement or mortgage in its appropriate risk category. Since finance is a two factor discipline, that is, risk vs. return, ZETA® allows subscribers to evaluate the relative likelihood of achieving the promised returns for a given asset.

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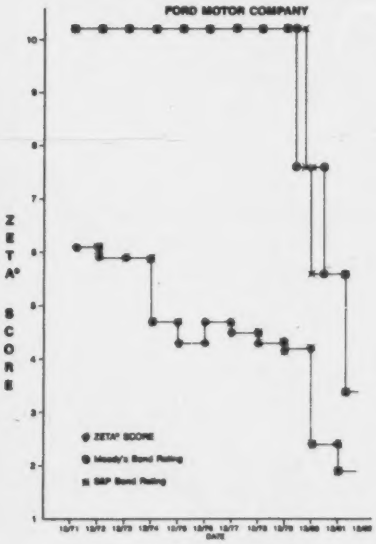
How Can ZETA® Help in Bond Management?

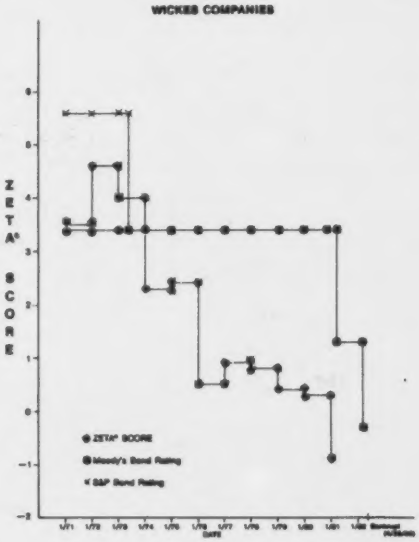
ZETA® has been serving for over five years as an effective alternative or complement to Moody's and S&P bond ratings. Below is a table of the average ZETA® scores by senior debt rating:

Moody's/S&P Ratings	Average ZETA® Score
Aaa/AAA	10.2
Aa/AA	7.6
A/A	5.6
Baa/BBB	3.4
Ba/BB	1.3
B/B	-0.3

While these are the average scores for the various ratings, few companies have scores equal to the average. Portfolios with holdings concentrated in the top half of each rating have a smaller chance of suffering downgrades than those with random holdings. In fact, 83% of upgrades come from companies whose scores are above the average scores for their bond ratings. Likewise, 88% of the downgrades come from companies whose scores are below the averages for their bond ratings. A test of ratings revised by the agencies between August '80 and July '82 indicated that nearly 70% of rating changes could be anticipated by using ZETA® scores and simple decision rules and that the average lead time was close to three years.

Two illustrations of ZETA® anticipating rating changes follow. (Moody's and S&P ratings are graphed by using the average ZETA® score for each bond rating as shown above. For example, Aa or AA ratings have a value of 7.6.)





How is ZETA® Used in Equity Management?

ZETA® has been used by bank trust departments, corporate pension sponsors, index funds, and independent money managers to meet "prudence" requirements established by ERISA. One approach is to select a minimum acceptable score for "investment grade" securities and concentrate research on the companies with scores above the minimum. Companies that fail this test could be included only after the most stringent raview.

Another indication of ZETA®'s value to equity management is given by the following table prepared in 1976 from S&P 400 companies. The table shows the relationship of changes in ZETA® score to subsequent dividends.

Percent Change in ZETA® During Base Year	Average Percent Increase (Decrease) in Dividends Compared to Base Year for Subsequent:		
	Year #1	Year #2	Year #3
Over 75% Increase	26.6	43.3	71.9
50% to 75%	28.5	36.1	63.7
25% to 50%	7.3	18.1	27.1
0% to 25%	6.3	10.9	14.9
0% to −25%	2.8	6.2	11.7
−25% to −50%	(3.6)	(3.3)	3.7
−50% to −75%	(33.1)	(28.0)	(15.1)
Over 75% Decrease	(53.1)	(54.0)	(37.3)

A more recent, but less comprehensive, study of companies whose ZETA® scores changed between 1977 and 1978 showed similar results:

Absolute Change in ZETA® Score from 1977 to 1978	Average % Increase (Decrease) in Dividends Compared to 1978		
	1979	1980	1981
increase greater than 2 points	53%	85%	99%
increase of 1 to 2 points	43	66	78
decrease of 1 to 2 points	(1)	12	34
decrease greater than 2 points	(3)	1	14

ZETA® scores have also been used to generate research "ideas." Increasing scores can identify companies with improving risk profiles. Lower risk can result in stock price gains, even if no change occurs in expected earnings.

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COMPANY NAME	DATE BANKRUPT	FINAL ST'MENT DATE	ZETA FINAL ST'MENT DATE	ZETA F.S.D. -1	ZETA F.S.D. -2	ZETA F.S.D. -3	ZETA F.S.D. -4	# OF MOS /W NEG SCORE PRIOR TO FAILURE
AM INTERNATIONAL	4/14/82	7/81	-4.60	-0.18	0.35	1.01	0.32	20
ACME HAMILON MFG	2/28/78	10/76	-5.54	-4.40	-4.25	-4.00	-4.12	124
ADVENT	3/17/81	3/80	-6.10	-4.22	-1.41			36
ALAN WOOD STEEL	6/10/77	12/76	-4.92	-3.18	-0.31	-0.84	-1.33	89
ALLIED ARTISTS	4/5/79	3/78	-7.07	-8.18	-7.14	-2.29	-1.40	120
ALLIED SUPERMKTS	11/6/78	6/78	-6.11	-5.28	-4.59	-2.92	-2.41	88
APECO CORP	10/19/77	11/76	-8.29	-1.53	-2.16	0.94	4.67	35
ARCTIC ENTERPRSES	2/17/81	3/80	-4.12	-2.06	-0.78	0.26	0.54	35
AUTO TRAIN CORP	9/80	12/79	-9.30	-8.42	-5.76			33
BARCLAY INDS INC	6/81(?)	7/80	-10.47	-4.80	-3.78	-2.83	-0.17	59
BERVEN CARPETS	8/10/82	12/81	-7.10	-2.02	-0.92	1.35	-0.01	31
BOBBIE BROOKS	1/17/82	4/81	-1.98	-1.69	-0.29	-0.97	-3.03	103
BRANIFF AIRLINES	5/13/82	12/80	-3.40	-2.18	1.21	1.02	0.63	28
B BRODY SEATING	2/4/80	8/79	-4.87	-3.02	-1.15	-0.41	-1.32	53
CAPEHART CORP	2/16/79	3/78	-11.34	-6.54				24
COMBUSTION EQUP AS	10/20/80	3/80	-4.22	-1.60	4.23	3.38	2.65	19
COMMONWEALTH OIL	3/3/78	12/76	-2.57	-1.72	0.26	0.63	1.12	26
COOPER JARRETT	12/28/81	12/80	-8.56	-6.93	-5.18	-4.04	-3.98	120
EAGLE CLOTHES	11/1/77	12/75	-2.89	-2.38	-2.30	-1.83	-1.18	70
ERNST, E C	12/4/78	3/78	-4.49	0.78	2.00	1.81	2.04	8
FDI INC	12/1/78	4/77	-5.75	-5.93	-5.06	-0.58	-0.45	79
FILIGREE FOODS	4/2/76	7/74	-3.99	-3.97	-3.80	-4.87	-5.62	68
FIRST HARTFORD	2/23/81	4/79	-10.00	-7.30	-7.67	-5.45	-5.42	123
FOOD FAIR INC	10/3/78	7/77	-0.61	-0.68	-1.01	0.52	0.62	38
FRIGITEMPS	3/24/78	12/76	-1.65	-1.08				27
GRT CORP	7/14/79	3/78	-3.46	-1.62	-2.92			39
GARCIA CORP	8/8/78	7/77	-4.69	-2.49	0.61			24
GARLAND CORP	4/29/80	10/79	-1.85	-0.61	-0.04	2.54	0.70	30
GEN'L RECREATION	12/21/78	12/77	-14.41	-6.79	-4.39	-0.67		48
GOLDBLATT BROS	6/16/81	1/80	-2.35	-1.71	-0.59	0.36	0.46	41
GOOD, L S & CO	5/27/80	1/79	-2.75	-2.17	-1.63	-1.37	-1.31	64
HRT INDS INC.	11/23/82	1/82	-2.29	-2.38	-2.21	-2.64	-3.36	118
INFOREX	10/79	12/78	-3.69	-4.22	-3.66	-4.43		46
ITEL	1/19/81	12/79	-6.62	-1.79	-1.88	-1.15	-1.68	85
KDT INDS INC	8/5/82	1/82	-3.37	.08	4.11	3.70	3.68	6
KEYDATA CORP	11/31/80	7/80	-15.79	-9.55	-8.44	-7.25	-7.17	64
LIONEL	2/82	12/80	-1.61	-1.91	-2.19	-1.23	-1.70	121
LYNNWEAR CORP	2/81	11/79	-5.46	-2.05	-2.10	-1.80	-0.94	98
MANSFIELD TIRE	10/79	12/78	-8.20	-1.09	1.31	0.90	0.84	22
MANVILLE CORP	8/25/82?	12/81	3.12	4.10	3.52	3.29	6.21	0*
MAYS, J W INC	1/26/82	7/81	-2.03	-1.04	-0.44	-0.40	-0.74	78
MCLOUTH STEEL	12/8/81	12/80	-2.17	0.32	0.34	-0.45	2.29	11
MEGO INT'L	6/15/82	2/81	-7.46	-0.36	0.12	0.22	1.61	27
METROPLTN GREETNGS	1/18/79	12/77	-5.94	-3.89	-3.63	-2.45		49
MORTON SHOE COS	1/1/82(?)	6/81	-5.05	-2.72	-1.32	-2.05	-2.26	137
NATIONAL SHOES	12/12/80	1/79	-2.56	-1.05	-0.41			46
NEISNER BROS INC	12/77	1/77	-2.84	-3.02	-1.81	-0.98	-1.07	58
NELLY DON INC	11/29/78	11/77	-16.73	-7.11	-4.28	-3.40	-1.70	72
NOVO CORP	9/78	12/76	-5.03	-4.66	-3.36	-3.07	-3.23	128
NUCORP ENERGY INC	7/28/82	12/80	-2.18	-3.16				31
PACIFIC FAR EAST	1/2/78	12/76	-3.52	-3.95	-4.28	-4.74	-2.41	72
PATHCOM	11/30/81	12/80	-29.56					11
PENN DIXIE INDS	4/7/80	12/78	-2.88	-3.54	-1.71	-1.28	0.15	51
PIEDMONT INDS	2/22/79	5/78	-1.90	-1.38				21
RED BALL EXPRESS (TELECOM SCORE)	4/26/82	12/80	-2.75	-0.58	-0.62	-0.78	-2.46	94
REVERE COPPER & BR	10/27/82	12/81	1.49	1.36	0.40	-0.37	-0.98	0*
RICHTON INT'L	3/18/80	4/79	0.15	1.08	0.49	0.25	-0.59	0*
SAMBO'S RSTRNTS	11/81	12/80	-3.51	-4.28	-0.54	1.10	1.32	35
SAXON INDS	4/15/82	12/80	0.27	-0.06	0.14	-0.34	-0.50	0*
SEATRAIN LINES	2/11/81	6/80	-2.41	-2.69	-2.58	-2.77	-3.27	115
SHULMAN TRANS ENT	8/21/78	12/77	-7.31	-4.23	-2.58			32
SITKIN SMLT & REF	3/13/78	6/77	-4.07	-3.12	-1.24	-1.52	-0.17	68
SOLOMON, SAM INC	8/29/80	1/79	-2.03	-2.09				31
STELBER INDUSTRIES	3/10/76	6/73	-5.97	-2.40	-2.21	-2.93	-3.94	80
STEVCOKNIT INC	11/81	1/81	-2.47	-2.45	-0.07	0.01	0.70	34
TENNA CORP	6/25/81	1/79	-0.70	-1.52	1.87	2.21	3.36	41
UNITED MERCH& MFG	7/12/77	6/76	-0.38	0.24	1.72	3.23	3.04	12
UNIVERSAL CONT'R	3/22/78	11/76	-5.03	-5.32	-4.02	-2.96	-2.26	111
UNR INDUSTRIES	7/30/82	12/81	-0.24	-0.59	0.42	0.79	1.23	19
WEST CHEM PRODS	2/29/79	11/78	-0.31	0.35	5.70	5.98	5.44	3*
WHITE MOTOR CORP	9/4/80	12/79	-1.41	-1.95	-1.80	-1.85	-2.39	116
WICKES COS	4/25/82	1/81	-0.92	0.39	0.48	0.77	0.91	15
WILSON FREIGHT CO	7/80	12/79	-3.87					7
AVERAGE SCORE			-4.72	-2.62	-1.44	-0.79	-0.53	
# OF COS CORRECTLY CLASSIFIED			68	62	47	37	34	
# OF COS INCORRECTLY CLASSIFIED			5	9	19	23	23	
TOTAL NUMBER OF COMPANIES			73	71	66	60	57	
% CORRECT			93	87	71	62	60	
% INCORRECT			7	13	29	38	40	
AVE # MOS LEAD TIME								53

* ERROR IF LESS THAN FOUR MONTHS OF LEAD TIME

Mr. MITCHELL. Thank you. I was chatting with Congressman McDade. I did not want to interrupt your testimony, but you have made some fascinating recommendations, and have some intriguing insights. We just had to comment briefly on them.

Mr. Jackson is here. And after he presents his statement we will put questions to both of the witnesses.

TESTIMONY OF ARNOLD A. JACKSON, DIRECTOR, FERGUSON BRYAN & ASSOCIATES, INC.

Mr. JACKSON. Mr. Chairman, and members of the subcommittee, I bring greetings from Ferguson Bryan & Associates. I have two items that I would like to submit for the record at the conclusion of the hearings. One is just a covering sheet to identify my testimony. The other is a full report that we did about 3 years ago for the SBA on the question of economic criteria. The methodology included is quite similar to the methodology being proposed in H.R. 863, and I would like to have that full report submitted for the benefit of the subcommittee.

Mr. MITCHELL. Without objection, the report shall be maintained in the official files of the committee.

Mr. JACKSON. My testimony includes 3 basic parts: One, some observations from my review of the history of 8(a). Second, some recommendations concerning how the proposed H.R. 863 might be simplified to ease its implementation. Then finally, a very brief recommendation of a new approach to minority procurement that over the long haul would do away with the concept of portfolios, and graduation, and fixed terms. Over the 25 years of 8(a), the first 15 or 16 years produced literally no activity between the SBA and the minority business community. The next 9 or 10 years leading up to Public Law 95-07 produced slightly more activity, but still a pretty great need for strengthening of the program.

About the time that the first record year of 8(a) procurements became widely public in 1980, Public Law 96-481 was introduced, which began to address the issue of fixed term participation.

I think that the important point about Public Law 96-481 is that it did not arise from any serious study, or rigorous analysis, or reports, but it seemed to have grown up due to a wide breadth of criticism about the 8(a) program.

Following that, the fixed-term participation methodology was developed. I would like to point out some key weaknesses in the mechanics of how fixed term operates. I think that we have probably covered pretty well the pros and cons of the ideological underpinnings.

First of all, the inclusion of owner's net worth and the weight that it is given in the fixed-term participation model is inappropriate particularly in light of the lower weight given access to credit and capital.

Second, the fixed-term participation model has resulted in an average term of 3 years assigned to the firms now in the 8(a) program. A 3-year average term is considerably less than the average startup period of time for most businesses in the U.S. economy.

Finally, the access to credit and capital in the financial market would seem to have at least an equal influence on the economic

outlook of a firm as the owner's personal wealth or net worth. Yet the fixed term participation model does not treat it as such.

Without getting too much into it, the weights of 40 points to access to credit and capital, and 200 points for access or for personal net worth, indicates a very subtle view on the part of SBA that the wealth or the status of the owner is more important than the access that the firm as an entity has to financial markets. I think that is quite wrong.

Some other observations concerning the need to move toward something like H.R. 863. Recently a GAO report to Congress done for the Defense Department, allegedly for the purposes of pointing out the problems with the 8(a) program indicated to the surprise of many that most 8(a) firms perform satisfactorily. I think that is quite commendable.

That GAO report is titled PLRD 83-4. Also, the problems that were identified with minority contractors who performed Military contracts were found not to be unique. They were the same problems that nonminority contractors serving the Defense Department have encountered.

What was found to be unique were the procedures that 8(a) has established for resolving contract problems.

Finally, concerning the observations that I think lead to the need to move toward H.R. 863. Very recently, the National Aeronautics and Space Administration made public its list of 100 top contractors. That list includes 11 minority contractors, who have been identified by individuals in the NASA Small Business Office as being among the outstanding contractors on the NASA list.

The list totals $4.8 billion. The 11 minority contractors account for roughly 1.2 percent of the total, while the top 5 majority contractors account for more than 50 percent of the total dollars. But at the same time, several of those 11 minority contractors will probably be dismissed from the 8(a) program due to the concept of fixed term participation which does not relate to performance or business development.

There are other examples that I think have not been given much attention, but I will not dwell on each of them. I think that they all point out the need to move away from the fixed term participation approach.

Concerning recommendations, I think that fixed-term participation for all of the reasons that have been pointed out should be eliminated, buried forever, and completely forgotten about. In that regard, I think that H.R. 863 is a great positive step forward, and a considerable improvement over fixed term participation.

However, some of the same lurking details of H.R. 863 that will operate against minority firms, we exist and they showed up in fixed-term participation. I will point out a couple of those.

One, the concept of competitive criteria, as proposed points out three areas—financial, marketing, and management. The proposed legislation requires that each area be given equal weight. But within each area, no assigned weighting approach is mentioned, which leads me to conclude that possibly SBA or people not identified would then determine what about marketing, or what about organization is important, and then that would be given the greatest weight.

So long as 75 percent is achieved in at least each area, and the total is 85 percent for all three areas, then a minority firm would be deemed to be competitive and ready for exit.

The problem with that is it will force someone to search for numerical criteria to evaluate operating components of a company that are not subject to that type quantification. That problem is typically handled by relying upon standard financial measures which are widely available, and generally acceptable, and will reflect the influence of marketing, organization, and financial viability. Some of the items pointed out have to do with staffing, or how actively a firm is seeking to bid.

I just do not think that it will be possible to numerically weight those individual criterion, roll them up, then compare those areas to each other, and determine that 85 percent has been achieved.

Another problem with the proposed competitive criteria approach is that the group of minority firms will be compared to a peer group. That peer group would be in the same geographical area in the same line of business.

I think that it is important that the age of the peer group, and the market share of the firms in the peer group, and the structure of the market that the particular SIC code encompasses will be more important to the credit and capital access of a minority firm entering that market than will be the geography and some of the other factors that are now in H.R. 863.

Finally, concerning a new approach to Federal procurement that I think needs to be considered by the subcommittee at some point in the future. I think that the focus has inappropriately for a number of years been on the size of the 8(a) portfolio or the number of firms in 8(a). Presently, less than 3 percent of the Government's Federal procurement dollars are spent with minority firms of any type. If that number were doubled, which would still not approximate the capacity of the minority productive base, the 8(a) portfolio per se probably would need to be 7,000 or 8,000 firms. So I think that there is currently no logical correlation between the number of firms in 8(a) and the effectiveness of the Federal procurement process which to date has escaped direct attention.

Therefore, what I would recommend is that the Federal procurement process be disaggregated by classes, and each class be subject to a target for procurement for minority firms, such as 3 percent for R&D, or 8 percent for office supplies.

I am suggesting that once that target is reached, then minority firms who happen to be selling those goods and services could be examined, only when that target is reached. When they are examined, they can be ranked from top to bottom. The largest firms—and precisely where it is cut off can be decided should then be compared to a SIC code group, but on the basis of age.

Those that are younger than the majority peer group should be given that number of years to complete the program that would bring them up to the average of the firms in the majority category. Those who are already older should be dismissed at the end of the fiscal year.

I think that approach would then have several advantages. One, the Federal procurement process is quite visible. The statistics are available. Preaward financial surveys are done routinely, and SBA

need not even be in that business, if the Federal procurement process were to seriously move toward those kinds of targets.

Second, the capacity is there in the minority community as demonstrated at NASA and at the Defense Department, which are two of the most difficult markets to crack by the minority firms trying to reach those targets.

But I think that would also require doing away with the concept of portfolios, and graduations, and other irrelevant issues. The other impacts would be that the flow of Federal dollars through those classes of goods would then over time force a more diversified minority business community. Then, personal net worth and assets of the owners would appropriately decline as factors that have anything to do with where, when, and how a firm does Federal contracting. Finally, minority participation in Federal contracts would also be considered such as small business participation; which seems to have a permanent place in the Federal policy framework, whereas minority business does not.

Those points conclude my statement. As I said, I will submit a full report on economic criteria that we did for the SBA several years ago.

[The referenced report was received by the committee and is being maintained in its official files.]

I appreciate the opportunity to share these ideas with the subcommittee.

[Mr. Jackson's prepared statement follows:]

PREPARED STATEMENT OF ARNOLD A. JACKSON, DIRECTOR, FERGUSON BRYAN AND ASSOCIATES, INC.

Background

The Small Business Act of 1953 included section 8(a) procurement authority for the Small Business Administration (SBA). Subsequently, fourteen years passed before the SBA saw fit to exercise it's authority as granted under section 8(a). At that time, (1967) following widespread urban unrest among historically suppressed minorities, an 8(a) test program was initiated. That effort sought to use noncompetitively awarded federal government contracts to lure small firms to depressed urban areas. In a fashion similar to the incentives concept of "urban enterprise zones" the small firms were required to hire unemployed and underemployed workers to qualify for 8(a) awards. The trial was not successful because of an unwillingness to relocate on the part of the small firms for whom the 8(a) contracts were to be reserved.

Following that period, in 1969, the SBA decided to utilize section 8(a) as a tool to spur the growth and development of disadvantaged businesses. This move represented an internal policy decision on the part of SBA and no legislative changes to the Small Business Act of 1953 were initiated at that time -- for those purposes. Still, the visible activity that arose from 8(a) procurement over the next nine years was not enough to measurably impact the ability of small disadvantaged firms to capture a reasonable share of federal government contracts.

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So, in October of 1978, Public Law 95-507 was passed as an amendment to the Small Business Act. PL 95-507 provided for the first time a legislative foundation for SBA's execution of its' section 8(a) authority. The foundation laid encompassed specific language which clearly articulated a definite purpose for 8(a). What PL 95-507 emphasized through its' section 202(a) and other parts of the amendment was:

- o Business ownership by individuals who are both socially and economically disadvantaged;
- o Competitive viability of firms in the 8(a) program - to be assured through contract, financial and technical assistance from the SBA;
- o Expansion of the program elements internal to the procuring activities that result in the acquisition of goods and services from small businesses owned by socially and economically disadvantaged individuals.

At this point in the history of 8(a), (1978) fewer procurement dollars had been spent through 8(a) over 25 years, than the total amassed over the next three fiscal years (1978-1980). In fact, the 1980 target for 8(a) contracts of $1.6 billion seemed quite impressive when compared to 1969's $9.0 million dollars awarded.

On the other hand, 1980's record 8(a) procurement did little to nudge total federal contracts awarded to minority businesses above roughly 3%. By any standards, that proportion of federal contracting was modest, slight, and indicative of well documented shortcomings of the federal procurement process that hinder effective execution of 8(a) objectives, as clarified by the PL 95-507 amendment to the Small Business Act.

The tumultuous chronology of 8(a) from 1953-1980 and on through 1982, provides an analytical framework for some key observations that I have made. These observations relate both to the program's current condition and the specific question of participation rights.

Key Observations

- While 8(a) authority is 30 years old, no program per se was actually implemented until 1969 - only 14 years ago;

- Over the period 1969-1978, little commitment on the part of Federal procurement officials was required or voluntarily forthcoming - leading to PL 95-507 to meet a crying need for program strengthening;

- The question of program participation was raised to the level of specific legislative language only in 1980 through PL 96-481, requiring closure in a participants tenure as part of a comprehensive Capital Ownership Development Program -- in response to "criticism and complaints"; not as a result of sound study, rigorous analyses, and open discussion;

- A recent GAO report to Congress (GAO/PLRD 83-4) found that many 8(a) firms performed satisfactorily and that performance problems were not unique to 8(a) firms; only the procedures for resolving them;

- Many inappropriate measures of economic advantage (e.g., owner's net worth) have been viewed by SBA in determining fixed terms as reflective of competitiveness, credit access, and marketplace maturity -- which are all quite subjective and difficult to quantify;

- No amendment, regulation, or agency procedure seems to reflect the role of the federal procurement process in rearching legislatively stated 8(a) goals, even though it is an element at least equally as important to total program success as is the size and content of the 8(a) portfolio. In fact, if the 2-3% of total procurement from minority firms was doubled which would still be less than one

half the minority population proportion; the portfolio of 8(a) companies would probably need to be considerably expanded, not reduced:

- o While access to credit and capital has as much influence on the economic outlook of a firm as personal assets or personal net worth does, the current fixed program participation weightings of disadvantage factors do not reflect that i.e., (access to credit gets only 40 points towards reduction of disadvantage while personal net worth gets 200);

- o Present average fixed participation terms (slightly more than 3 years) are meaningful and sensible only, if program entry is limited to firms with established track records that go well beyond the time in which most businesses fail (3 years).

Recommendations

These points, and my experience with small business operations, and policy result in the recommendations that follow regarding HR863.

Fixed Terms

- o Fixed terms for participation in 8(a) should be buried forever, since they do not reflect either business development on the part of minority businesses or progress in contracting with minorities on the part of the Federal Procurement system. Accordingly HR863 is a positive step and a considerable improvement over fixed term participation;

- o However, if the presently proposed HR863 is adopted, it should be simpified to:

  - reduce the number of criteria of competitiveness, because financial, marketing, and management factors are not equal in all cases. More importantly, reliable measures can not be constructed for all three areas. Only financial measures are considered reflective of all business operations.

  - minimize the administrative burden on the SBA

- recognize the importance of firm age and market share in comparing credit and capital access among 8(a) and non 8(a) SIC peer groups.

A New Approach

- o The federal procurement process should be subject to targets for each class of goods and services -- with achievement of a target triggering examination of the firm's receiving 8(a) contracts in that class;

- o When a class target e.g. (8% for office supplies) is reached, 8(a) firms should be subject to class completion in order of goods or service class participation. Class completion would then be a simple matter of applying the average age of all firms in the competitive SIC code to the minority firm. If the average age is above the minority firm's age, the 8(a) firm would receive some post completion time. If not, the minority firm would be exited from the program at the close of the fiscal year.

The likely impacts of these recommendations follow:

- o The portfolio concept of 8(a) program participation would gradually give away to a focus on achievements of the federal procurement process;

- o The flow of federal dollars through several classes of goods and services would ultimately force a more diversified community of minority firms doing business with the federal government;

- o Personal net worth and assets would appropriately decline as factors relevant to how, when and where a firm does federal contracting;

- o Minority participation in federal contracts would enjoy a more legitimate status such as that now accorded all small businesses.

Mr. MITCHELL. We appreciate your cooperation. Both of you gentlemen have given us some very interesting ideas to work on. Certainly, Mr. Haldeman, we have had access to the writeup of your activities in Business Week magazine. It was a highly fascinating writeup, and I see why you have been successful.

Mr. HALDEMAN. Thank you.

Mr. MITCHELL. I have several questions. Let me put it to both of you gentlemen. You are both business analysts.

Do you see any relevancy between the fixed program term as used by SBA, that system, to methods used by the private sector to evaluate risk in credit or capital allocation decisions?

Mr. HALDEMAN. As I understand the FPPT case, it is simply a time limit based on the point system. Now in part, if a banker were to make a loan, the banker would look at many of the things that are listed on the point system. But there would be no time period. The time period is not really relevant. A banker is interested in developing a relationship that would grow as the borrower grows. So it is really quite a different objective from what the SBA is doing. The SBA is trying in some way to maximize the impact that it has. That may be to get firms in, and at some point get firms out of the program, which is just the opposite of what a banker would do. But the analysis, at least as I see it, of how you decide when the firm should leave is when that firm is bankable.

Mr. MITCHELL. Mr. Jackson.

Mr. JACKSON. I do not think that there is any real connection between fixed term participation and the way that credit is allocated in the open market. I think while some of the points in fixed term participation might exist in a banker's scoring mechanism, the decision to allocate credit is one that merely uses those points along with judgment and other factors.

Then, of course, is the entire informal system of making high risk loans that is not available to minority businesses. So I do not think that the fixed term has any bearing on reality for these purposes.

Mr. MITCHELL. Would I be misquoting you then if I said from your perspective that the fixed program participation term is really irrelevant to good business development?

Mr. JACKSON. You would be quoting me correctly.

Mr. HALDEMAN. Well, as I said, an arbitrary time limit has really no bearing to section 8(a)(6). That is clear. Well, let me leave it at that.

Mr. MITCHELL. Yes, but you have made your point very well, though. An objective in the private sector is to establish a business relationship in the hope that the recipient of bank funds will be a long-term partner, and maybe borrow larger sums, which in turn, would generate higher interest payments, et cetera.

Whereas apparently the objective of the fixed program participation term is to move firms out to make room for others without looking at whether economic viability has really been achieved. I think that that is the distinction that you have made.

Mr. HALDEMAN. In looking at the point system, they have obviously made some attempt to quantify which firms might graduate. The length of the term is inverse to the points scored. So the

stronger that you appear to be on the point system, the shorter the time period.

I am not sure but I doubt those time periods really have any—other than being a relative way of ranking the companies—clear economic objectives.

Mr. MITCHELL. Now I will put the same question to both gentlemen. The Small Business Administration does its own internal evaluation of who should be "graduated" out of the 8(a) program. I got a sense from one of you two, I forgot which gentleman it was, that somebody other than the Small Business Administration should be doing that evaluation.

Was that yours, Mr. Haldeman?

Mr. HALDEMAN. Yes.

Mr. MITCHELL. Why do you recommend that?

Mr. HALDEMAN. I recommended the credit professionals, because they are people well trained in bank policies, perhaps even on a loan program for a year or two from the money center banks. The purpose is to insure that the investigation of these companies is quite professional. That was the first objective, to have a professional evaluation of the qualitative as well as the quantitative factors.

The second point was to have a blue ribbon panel of chief credit officers of banks, major money center banks, who might consider this akin to jury duty.

Mr. MITCHELL. Please.

Mr. HALDEMAN. I mean that this is a kind of civic responsibility, and that they could afford to put a certain amount of time into it. Their purpose would be to review the recommendations of the credit professionals, and to make as fair an assessment as possible as to whether a firm could in fact go out and reasonably finance its business in the public sector.

Mr. JACKSON. I would have a couple of problems with that approach, although it has a certain sophisticated appeal. Those individuals are the same individuals who are now inaccessible to minority firms, who carry around the same biases toward doing business with minority firms, and would merely substitute the problem we now have with SBA.

I think that the Federal agencies who do procurement on a daily basis have established preaward procedures by which they convince themselves that firms are capable to perform. I think that that same system can be applied to minority firms. It need not be developed to the level where every minority firm has to be approved by both Citibank, Chase Manhattan, and all of the others.

Those are also the same people who backed Chrysler and Lockheed.

Mr. MITCHELL. On the point of coming out of the program, graduating from the program, should an outside body look at this firm in a very objective fashion, and say yes, you are ready to move?

Mr. JACKSON. I would not think so. I think that if the targets are set appropriately, the issue of leaving the program would be raised to a level where that kind of framework was required.

Mr. MITCHELL. Congressman McDade.

Mr. HALDEMAN. May I just comment?

Mr. MITCHELL. I am sorry.

Mr. HALDEMAN. There may be a difference in assumption here. I am assuming that at some point, even if there is some sort of discrimination by bankers, that at some point the business is too good to turn down. I am saying, "OK, let us take some people who know this business, and let them decide, even with their biases, the point at which they would make the loan."

Even if the decision requires 10 percent more equity on the part of the minority business than it would for a nonminority business. If they are looking at making two different loans, maybe for the minority business, they would require an extra 10 percent. The point is when the firm achieves that extra 10 percent, that is when the banker would make the loan.

Do you understand?

Mr. MITCHELL. I understand.

Mr. HALDEMAN. I am saying let us factor in that bias.

Mr. MITCHELL. The bias.

Mr. HALDEMAN. If that is the point at which the banker is willing to take out his wallet, you know, and pull out some money, then that is the point where the firm should be bankable.

Mr. MITCHELL. Mr. Jackson.

Mr. JACKSON. I just think that that is really objectionable, because it is just a more sophisticated approach to the same problem that SBA has with fixed program terms. You cannot bring down bankers who made certain decisions on a daily basis that result in the very hearings that we are having, and then assume that they will miraculously become more reasoned and more understanding of minority business problems. I just think that that would be terrible.

Mr. HALDEMAN. I think that it is wrong to assume that those bankers do not make loans to minorities. That is an assumption that I think is [illegible] They may not make loans to minority entrepreneurs who [illegible] have much capital. I am sure that that is quite true, but [illegible] point, the business is too good to turn down.

Mr. MITCH[illegible] derstand it, you are saying let us try your approach, re[illegible] nber one, the history of banks and their reluctance to co[illegible] minority firms. Out of that recognition, we will bu[illegible] other kind of factor to mitigate against that almost his[illegible] that has existed in the institutions.

Mr. Jac[illegible]n, are you saying you just cannot do it that way. It is the same types of people who have been at least peripherally involved in forcing a fixed program participation term that will be making these decisions.

Congressman McDade.

Mr. MCDADE. I want to express my gratitude to both of you for spending time with us this morning, and for giving us very concrete suggestions. Even though there is disagreement sometimes between both of you, that is part of the process. You have given us very concrete suggestions to think about.

Let me ask just a couple of questions, if I may. Mr. Haldeman, on the question of graduation, you used the term bankability, and a new phrase that can be subjected to many interpretations. You would remove for purposes of graduation anything other than the test of bankability, and you would remove any kind of third party participation. That would be the business plus the bank period.

Is that what I understand your testimony to be?

Mr. HALDEMAN. Yes. A banker probably would not make a loan based on 8(a) participation unless it knew that its loan would be liquidated during the period of the contract.

Mr. MCDADE. I do not know how this would work administratively. Let us assume that we are all looking toward the goal of expanding participation in the 8(a) program. I mean I think that that is what we are trying to do. We are all trying to find a balance between when a company should leave the 8(a) program. They should not be there forever, but they should leave at some point. Your point is that they ought to go over to a bank at some point, and I do not know exactly when.

Whoever is administering the 8(a) program, or the administrator of SBA, say to that 8(a) firm, we think that you ought to go out and try the bankability test now, and send him out in the street, and try to see if he can get private capital, how does that work?

Mr. HALDEMAN. Well, I guess that I have an underlying assumption. That is that I believe that the 8(a) program should not be an annuity, and that the firm should understand that the ultimate purpose is that they should build capital, but at some point be able to leave and operate on their own.

Mr. MCDADE. Right.

Mr. HALDEMAN. So that is an assumption. Through measuring the financial statements, there are ways of determining when a firm may be nearing a point where it actually could be bankable.

Mr. MCDADE. That test would be an objective test based on the financial statement of the corporation, or whether they were a partnership, or whatever the entity was?

Mr. HALDEMAN. It depends on how small these companies are. I have really never dealt with companies like my own, which are too small. But at some point, they begin to be measurable, at least in a way that I can measure them.

Mr. MCDADE. Suppose that I were to impose on your good will, and say draw up an objective test based on whatever, and I am not an expert on financial statements, whatever objective signs that would appear in a financial statement, at which point it would not be a decision that would be based on someone unknown and unseen in SBA, but it would be the corporation's performance, or the partnership's performance.

Could you draw up a test by which they would then automatically go to a bankability term over in the private sector? Could you draw up an objective test like that?

Mr. HALDEMAN. The product I sell are called Zeta scores.

Mr. MCDADE. Right.

Mr. HALDEMAN. Either through that product or something similar to that, I would have a way of looking at the conceptual areas that a banker would look at. He would look at capital structure, the profitability, the liquidity, the size of the company, and the stability of the earning stream over a period of years. I would be able to through this type of methodology assign weights to each of those concepts, and come up with a score. The score would then be something that could be ranked.

Now in the terms that I am used to dealing with—which is publicly held companies—I suspect that most of the 8(a) firms would

score very low. But I also suspect that there would be a relatively normal distribution. If you looked at the top 10 to 15 percent of these firms, you probably will find relative healthy companies that have, I would think, reasonably good prospects of——

Mr. McDADE. Of meeting a bankability test?

Mr. HALDEMAN. Yes. And at that point I say "Let's not use this credit screening methodology as a sole test." For one thing there could be data errors. There are all kinds of things that could go wrong in using a thing like this. But if I have a credit professional, somebody who analyzes both the qualitative aspects as well as the quantitative aspects of a company, then I would let him make the judgment according to his ability.

But, of course, if a firm is not moving in non-8(m) areas, it may be just operating in the 8(a) system, and building a reasonably good balance sheet, because it is able to do what 8(a) wants it to do, and that is build capital. But it is not effectively moving into the private sector.

Then you have kind of a problem. The company may have resources, but not developed very good lines outside.

Mr. McDADE. Mr. Jackson, what is your reaction to that?

Mr. JACKSON. Let me say that I am not opposed to the Z score, is that what you are talking about?

Mr. HALDEMAN. The Zeta score.

Mr. JACKSON. Is that called Z score?

Mr. HALDEMAN. No, it is not the Z score.

Mr. JACKSON. The problem with that approach is bankability can mean so many different things. It could mean a revolving line of credit.

Mr. McDADE. By saying that, yes.

Mr. JACKSON. It could be a line of credit. It could be long-term debt. It could be debt or equity.

Mr. MITCHELL. But bankability is a term that we can define.

Mr. JACKSON. I do not think that it can be defined in a way that is precise enough to then apply it to portfolio firms. Bankability would have to be defined as to type of credit that a firm is seeking. It could be collateralized or noncollateralized. The ratios or the techniques applied by the bank will be different in each case. So there are some difficulties with the term bankability.

Mr. McDADE. I can understand that. In fact, when the chairman and I chatted about the interesting concept, we said well, the difficulty is a term of art. It is a word that is subject to definitions, and that is part of the problem.

But assuming an effort at further definition for purposes of deciding when a firm graduates based on objective criterion, do you believe that that can be done?

Mr. HALDEMAN. Do I believe that bankability can be the prime test?

Mr. McDADE. No, taking the term, right, and sharpening it, defining it for as many types of circumstances in the financial community that your expertise would guide us to, whether it be a collateralized loan, you know, the things that you know better about than I do.

But taking those particular tests, right, and applying them, and then moving them toward some objective statement, be it a P&L,

or whatever statements they look at, where there would be just objective factors, do you believe that that is possible to do for purposes of deciding graduation?

Mr. JACKSON. That would be possible with the exception of the 8(a) portion of a firm's business might well need to be set aside to determine if the financial condition that you are looking at is reflective of what the financial condition would be the day following a firm's graduation.

Mr. MCDADE. We are trying to get toward a balance, are we not? We are trying to decide when or if a firm should never graduate in 8(a). I do not know whether that is your opinion or not.

Is that your opinion?

Mr. JACKSON. I object to the term graduation to begin with.

Mr. MCDADE. What term would you use?

Mr. JACKSON. I think that the firms should be allowed to be awarded setaside contracts as long as the Federal Government is doing such a miniscule percentage of business with minority firms.

Mr. MCDADE. I do not quite understand what you mean.

Are you saying that you would set down a mandated percentage of all procurement, and mandate that percentage of Federal procurement to go to minority firms?

Mr. JACKSON. By class of goods, yes.

Mr. MCDADE. So you would have a percentage, whatever it might be. I think that you said that the facts show 3 percent.

Mr. JACKSON. Currently 3 percent.

Mr. MCDADE. You would take a figure, and put it into the statute, and break it down as you said, whether it is business forms or whatever, and require that from a procurement point of view?

Mr. JACKSON. Precisely.

Mr. MCDADE. But that does not have to do, does it, with the question of whether or not a firm, a specific firm, should make room within the 8(a) program for another firm that is coming along. I think that where we differ, and where I want to get clarification with you, is I use the word graduation. I do not want to get hung up on a word with you. You agree, I think, that any firm that is doing business, let us say part 8(a) and part commercial, can reach a point where it ought not be eligible for special assistance of an 8(a) program. Do you agree or disagree with that statement?

Mr. JACKSON. I think that I disagree. I do not think that the special assistance or the definition that you have attached to 8(a) is appropriate. In my view, it is no different from small business setasides, or any other special procurement setaside.

Mr. MCDADE. But we have a series of benchmarks by which a small business is no longer a small business. We hope that an Apple computer occurs every day, and that it is not going to stay a small business forever. That it is going to grow, and that it is not going to be eligible for special assistance. That it is going to have a drive behind it that is going to make it a highly successful firm. Therefore, you move it out, and you make room for someone else to come in, and take advantage of special setasides or whatever, different programs that we pass in this committee, and other committees of Congress, to try to help disadvantaged people get into the mainstream.

It seems to me that we have a basic disagreement. Or I do not know if we do, or we do not. Because I am trying to understand. Let us just assume like a company like Apple Computer, which started with about six guys, gets to the point today where they have enormous sales, they should not be eligible for these kinds of programs, should they?

Mr. JACKSON. What kind of programs? Small business setasides?

Mr. MCDADE. Setasides, 8(a) programs, or any of the rest.

Mr. JACKSON. They would not be eligible for minority contracts, of course.

Mr. MCDADE. Let us assume that it is a minority firm.

They should not be either, should they?

Mr. JACKSON. Just a second. On the question of Apple Computer, and high technology development, the Congress is now considering setasides for joint research, because of the problems that our capital markets have with addressing risk. That same problem is exacerbated with 8(a) companies, which is why my approach is as it is.

Mr. MCDADE. Well, I am trying to focus with you on the statute that defines an 8(a) individual does not just cover a black person, or a white person. It covers numerous people including socially disadvantaged people. So let us assume that any one of the groups that qualifies under the 8(a) definition, and is therefore eligible for whether it be a setaside or some kind of assistance, grows as we hope that it will grow to the point where someday whether you use a bankability test, or whatever it might be, that they are going to be successful. The whole purpose of the program is to try to stimulate them into being successful.

Mr. JACKSON. Right.

Mr. MCDADE. Should they at some point not be eligible for these programs?

Mr. JACKSON. Let me go back to my example of the National Aeronautics and Space Administration. I think that as long as they are doing a total of 1.2 percent with 11 outstanding minority firms, that they should be able to stay there, if it is 10 years or 20 years, until they reach some representative proportion of business that they have figured out a way to do with minority firms who have proven that they can perform.

Mr. MCDADE. Well, we have worked hard with NASA, and NASA has done a very good job. I am trying to get answers, and maybe we cannot do it, so I will just express my opinion. My opinion was that the whole purpose of what we are doing is to get the point where firms get so successful, that they do not have to compete by way of mandatory setasides or sufficient types of other governmental assistance. They have grown. They have become, "bankable," if you want to use the term that we have tried to define a little bit, based on an objective set of circumstances.

It may be true. I do not have the same experiences that you do, and I am not in the private sector. You say that there are a certain number of people who do not want to deal with minority firms period. I do not doubt in our country that there are prejudices. Of course, there are. I do not doubt that.

What intrigued me about the conversation today is if you got to an objective standard, some kind of a profit and loss statement, whatever it was, at which point no individual who may or may not

be a bundle of prejudices, which most of us are, but a P&L statement. I do not know what all the banks ask for, but the P&L statement or whatever it is shows that the company or corporation is ready for example for bankability, then you remove the potential prejudices, the fears that perhaps all of us share about whether or not somebody is doing something that is on the square, or whether it is something inside of them that is not making the right decision, and you get to an objective standard.

That is why this possibility was so intriguing to me, trying to do something like that. But as I hear you, what you are saying is that if there are 1.2 percent of the procurement, whatever the figure is at NASA, and there are x number of firms in it, and they are minority business firms, that that should be a guaranteed setaside of size or anything else?

Mr. JACKSON. Not a guaranteed setaside. They should be eligible for those contracts as long as NASA does no more than 1.2 percent with minority firms in or out of the program. NASA or any other agency is free to do business with any minority firm that happens to show up. These are firms who have proven their capabilities.

Mr. MCDADE. Yes.

Mr. JACKSON. Their additional capacities could also be documented. NASA could be given a target that is quite achievable. But it would be based on the capabilities of minority firms in those lines of business.

Mr. MCDADE. We would hope that at some point you just would not have that necessity, that you would have all kinds of openness in dealing, and all of the rest of it.

Mr. JACKSON. Right.

Mr. MCDADE. I thank you both.

Mr. HALDEMAN. I think that I do recognize that bankability is not a totally objective standard. I referred to it as a more objective standard, and I think that that is true. But when I go to the bank, and ask for a loan, they say, "Sure, no problem. Just pledge your house as collateral, have your wife cosign it."

I think that that makes me bankable, because those are the terms. I know that Mr. Jackson would not agree that the personal guarantee of the principal should be involved. But in my terms, I think that it should be when you have personal assets.

Especially for a small businessman, who could for example be a subchapter S corporation where the earnings of the firm flow through to the individual. As in a partnership, there would be no equity building up in the company. That is the way that entrepreneurs get started. Entrepreneurs go to the bank, and they may have to sign the house over, and that is the way it is done. To me, that means bankable.

Mr. MCDADE. I do once again want to express my appreciation to both of you. It has been very helpful. I appreciate it. Thank you.

Mr. MITCHELL. The Chair would like to do something that often does not happen in a hearing. I have one real emergency call that is coming into my office. It was due in at 11:30. I hope I can get there. We will take an 8-minute recess.

Mr. DAUB. I have a couple of questions for these folks later. I will wait.

Mr. MITCHELL. If you would wait it will be your turn to question them when we resume.

Then Mr. Farrington will be the next witness, followed by Mr. Sanders from the Small Business Administration. Eight minutes, I promise. My office is right around the corner.

[A short recess was taken.]

Mr. MITCHELL. We will now resume our hearing. Thank you, very much, for allowing me to take care of that one item of information.

Congressman Daub, I am very happy to let you know, and some of the other friends in this room, that a former 8(a) firm that I know, and have been working with did get its $13 million contract today.

Mr. DAUB. Terrific.

Mr. MITCHELL. So that is what I was concerned about, but it is on line. It was worth taking a break.

Mr. DAUB. Are they ready for graduation now, Mr. Chairman.

Mr. MITCHELL. I said a former 8(a) firm. A firm that became so frustrated with being in 8(a) that it voluntarily removed itself.

You have some questions.

Mr. DAUB. I have that some firms like that, too, that got so frustrated, Mr. Chairman, that they did get out, and sought other ways, and are managing to do fairly well.

Just a couple of questions, I read the testimony quickly, although I did not get in at the beginning of our current panel. Mr. Jackson could you tell me what was your figure for NASA?

Mr. JACKSON. Currently, in fiscal year 1982, it was 1.2 percent.

Mr. DAUB. But you argue that that is not enough?

Mr. JACKSON. I would argue that it is not enough.

Mr. DAUB. Compared to what?

Mr. JACKSON. Compared to the capability of the 11 firms.

Mr. DAUB. Intellectually, to be honest then, since you say that is not enough, you have got to tell me what is enough.

Mr. JACKSON. I think that the capabilities of those firms could be determined, could be easily accumulated, and the figure could be 5 percent. It could be gradually adjusted upward by a percent per year. But if the firms have grown from a position of being unable to serve NASA, to being identified as top performers, certainly the upper side of that capacity is yet to be tapped.

Mr. DAUB. Would you be willing to suggest then academically that maybe if we evaluated them that they got too much business, I mean is it possible?

I mean if you say they have too little, those 10 to 13 firms, equally 1.3 percent, that it is possible that if they were carefully evaluated, they might not stand the light in day scrutiny, and that we might find that those firms have too much of the business of NASA. Is it possible?

Mr. JACKSON. I do not think so.

How could you have too much?

Mr. DAUB. That is what I am getting at. You have got to tell me. If you say it is not enough, how much is enough?

I am sure that you have read the budget of NASA, looked at their total amount of money, and just made a decision that they spend x, so only x is being spent over here on 8(a), so that is not enough.

Mr. JACKSON. No, no. I looked at a listing of NASA contracts to the top 100 contractors, and identified the 11 minority firms. Their percentage totals the figure that I just provided you. The NASA officials indicated that they were top performers.

Bringing the two together, my conclusion was, if you are a top performer, and you are new in the marketplace, it is highly likely that you have additional capacity to perform. It is very unlikely to have too much of that kind of business.

Mr. DAUB. So we automatically then ought to assign greater percentages of dollar awards?

Mr. JACKSON. I would suggest that if you ask NASA to do it, that they would admit that they could do more.

Mr. DAUB. But the process of 8(a) for disadvantaged firms was not premised upon your——

Mr. JACKSON. That is that problem that I see in the process of 8(a), and that is the point that I am making.

Mr. DAUB. OK, I see. All right. You know, FHA, for example, has fixed participation, if you want to look at it that way. You get a 4-year loan, a 7-year loan, a 9-year loan, or a 15-year loan, and you sign your life away in the risk of entrepreneurial capital formation techniques, and indeed you pay off your note.

With all due respect, Mr. Jackson, you do not have a marketability concept there. You do not have an automatic entitlement concept there. You get a loan for whatever reason, and you are out of the program, and your loan better be paid off.

How do we make your accommodation in an 8(a) program using a new technique that we ought to give those that are in more when that was not the original purpose of the program to begin with?

Mr. JACKSON. Well, if the original purpose of the program, as I believe it does, has flaws in it, I do not think that we do ourselves or anyone any justice to continue to respond to those flaws by small changes in a bad regulation. If departments are willing to do more, if firms are capable of doing more, maybe just some suggestion from you or others might allow the firms to grow without any set targets that are mandated by law.

Mr. DAUB. Have you ever had one of those big firms that are one of the top performers with NASA ever say to you that they would like to be a NASA contractor but cannot get in because there are two, three, or four 8(a) guys that have gotten some good experience and some good contracts, and NASA would prefer to do business with them now because they are reliable? Thus, I am never going to get a chance to get into the 8(a) business with NASA, because there is just no room for me in the program. Have you ever heard any smaller firms say that to you as a consultant?

Mr. JACKSON. No, they have not. If someone says that, it just once again underscores the problem with having a limitation on how many firms are on the supply side.

Mr. DAUB. You say, leave in everyone who is in.

Mr. JACKSON. Who is capable, and willing, and is peforming satisfactorily. What reason would you have for dismissing them?

Mr. DAUB. In other words, you just do not think that there should ever be any graduation so to speak—and pardon the use of the word if it bothers you—from the 8(a) program, as long as there

is a fair amount of Government business being given to disadvantaged firms?

Mr. JACKSON. As long as there are firms in those categories that can perform, yes.

Mr. DAUB. OK, I understand where you are coming from now. Do you believe that the 8(a) program then should guarantee at some point the future success of a company?

Mr. JACKSON. No.

Mr. DAUB. That is all I have, Mr. Chairman.

Mr. MITCHELL. Thank you, very much. My friend and I always have these little brief exchanges of understanding each time he speaks. As informational background, I share his concern about getting more firms into the 8(a) program, but that will never happen as long as we have a situation where, for example, in 1980, the Department of Defense offered $1 billion plus for 8(a) firms that SBA turned back.

So it is just not a matter of graduating people out. It is a matter of seizing onto the opportunities that are offered but are now rejected.

Gentlemen, thank you, very much. It has been interesting testimony.

Our next witness is Thomas A. Farrington, chairman of the Black Business Support Group [BBSG] of the National Association for the Advancement of Colored People.

Mr. Farrington, thank you, very much. I have no hesitancy acknowledging you as a long-term friend of minority business. I have no hesitancy thanking you for the advice, guidance, and counsel you have given me throughout the years, as we both seek to enhance the movement toward economic parity for minority business.

Thank you. We have a copy of your testimony.

TESTIMONY OF THOMAS A. FARRINGTON, CHAIRMAN, BLACK BUSINESS SUPPORT GROUP, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. FARRINGTON. Thank you, Mr. Chairman, and members of the Committee on Small Business. It is indeed a pleasure for me to have an opportunity to be here to testify on H.R. 863. I would also like to offer for the record a copy of the business advocacy program of the NAACP and the Black Business Support Group.

Mr. MITCHELL. That will be submitted for the record in its entirety.

Mr. FARRINGTON. Thank you.

Mr. Chairman, I am Thomas Farrington, president of Input-Output Computer Services of Waltham, Mass., and also chairman of the Black Business Support Group to the National Association for the Advancement of Colored People.

Today, as chairman of the Black Business Support Group, I find it most fortunate that the bill H.R. 863 gives me this opportunity to recapitulate or reconvey the very crucial commitments that Congress historically made on Oct. 24, 1978 to the American minority business community with the passage of Public Law 95-507.

Congress at that time affirmatively conveyed to the American minority business community that the functioning of our national

economy can be ameliorated by providing the maximum practicable opportunity for the development and growth of small business concerns owned by members of socially and economically disadvantaged groups.

Premised on this formal statement of commitment, and having just completed a very successful 2-day Black Business Advocacy Conference in Charlotte, N.C., I would like to thank Congressman Mitchell for his support and efforts, would like to submit for the record a copy of the document outlining the black advocacy program initiatives.

Mr. Chairman, as you know, the initiatives of the BBSG are consistent with the continued effort to achieve economic parity for blacks and other minorities in this country. Several of the initiatives of the black business advocacy program relate specifically to the purpose of, and are consistent with, the provisions of H.R. 863. Initiative No. 3 of our program calls for a strong and expanded 8(a) program. It is our opinion that the provisions of H.R. 863 will serve to clarify the original congressional intent of Public Law 95-507, and equally serve to provide administration of the 8(a) program with a more rational and logical set of criteria of competitiveness for companies in the 8(a) portfolio.

For too long, companies who participated in the 8(a) program have been plagued by a lack of definitive administrative policy which insures that there is a direct relationship between SBA's administration of a company's business plan and the development of that company to a realistic and quantifiable level of viability and competitiveness.

Mr. Chairman, the Black Business Support Group wholeheartedly supports your establishing criteria for competitiveness in each of the areas of financial management and marketing functions.

I firmly believe that the current SBA point system for determining fixed program participation terms, which is the basis now for determining a firm's competitiveness, is grossly misleading.

In support of your proposed criteria for competitiveness, I submit the following arguments as a businessman whose company has experienced development through the use of the 8(a) program.

(A) The reasons that a company owned and operated by socially and economically disadvantaged persons needs the 8(a) program is due to lack of access to capital and markets, and lack of management skills to operate the company, or a major division within a company. We all know and accept the fact that these conditions have been imposed on minorities due to institutionalized racism.

(B) The 8(a) program initially provides access to markets, although all the markets are within the Federal Government. If an 8(a) company provides a quality product or service under the 8(a) program, then that company indeed is able to gain access to a market under sheltered conditions. However, the management resources required to successfully penetrate and service this sheltered market are tremendous. Again, the 8(a) firm is developing and learning management skills at this level for the first time.

(C) Assuming that a company is successful under the 8(a) program, for a number of years that company will develop financial equity and management skills. However, this does not resolve the access to capital problem that it had initially, nor does it begin to

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address a firm's ability to market successfully outside of the 8(a) program. It does, however, form the basis to develop these areas. But these are not trivial challenges.

Therefore, Mr. Chairman, we do support the provisions of H.R. 863 which assures that a company will not be graduated from the program unless that company has achieved its criteria of competitiveness with the full and effective support of its business development program submitted to the SBA.

Your bill provides us with the due process standards to grant the right of economic freedom and fair play, which is an important link toward full obtainment of U.S. economic growth, development, and innovation.

Mr. Chairman, the Federal Government has made tremendous strides in developing socially and economically disadvantaged businesses through the 8(a) program. During this process, we have all learned what a gigantic struggle it is to be successful at this critical task. However, the Federal Government must not turn back. In the face of opposition, the Federal Government has to be the catalyst for guaranteeing the opportunity for full participation in our free enterprise system for socially and economically disadvantaged persons. In the face of inappropriate laws, legislative action must be taken; that is the American way. Today black Americans are carrying the brunt of our poor economic conditions; our unemployment is twice that of whites, and our youth unemployment is rampant. The Black Business Support Group to the NAACP believes that permanent economic gains for black and other minorities will come about as a result of our sharing in the free enterprise system as business owners.

We further believe that our current economic problems, including unemployment are but a reflection of the depressed figures on the bottom line of minority-owned businesses.

Mr. Chairman, we believe that if the unemployment within white America were as high as it is within minority communities, then a state of emergency would be declared. I call on the Federal Government to declare our communities disaster areas, and to suspend any further graduations of 8(a) firms, to reinstate all of the companies graduated to date, and begin a campaign for these companies to bring the American dream to blacks and other minorities within this country.

Dr. Hooks stated at our conference in Charlotte, N.C., this past weekend that we are talking about a big thing, not a little thing. We are not talking about contracts, but we are talking about the right of blacks and other minorities to participate in our economic system.

I would ask that the small business community of blacks and other minorities not be excluded from the free enterprise system. If they are not to be excluded from the free enterprise system, I would then ask you what other means do we have to enter other than as business owners.

I would also state that we are talking today about a detail. The big question is what is a commitment to minority business, and to black America, and to minority America. I think that if the commitment is there, then certainly the laws would be passed.

Public Law 95-507 was passed because of a commitment. Public Law 96-461, which contains a fixed-term participation, which we consider the death blow to the 8(a) program, was passed because there was opposition. The reason that we do not have large companies in here today is because they feel that we are working on the details and that they indeed have won the battle through passage of Public Law 96-461.

When we talk about bankability, then I would ask is it the balance sheet that determines whether a company, a country, or a person is bankable, or is it not our political system that indeed determines that.

I would ask you to look at our loans made to foreign countries, like Brazil and Poland, and loans made to Chrysler, and ask, are they bankable?

I would also tell you a story about my startup as a company, which is very interesting, relative to access to capital. I started a company when I was 25, and I worked very hard to get equity capital. I had a lawyer, and he took me to a number of places.

We spent the better part of a year trying to find equity capital. We could not find equity capital, even though we thought we had a good idea. I think that the success of our company has proven that. We were able to get credit through the Small Business Administration.

This past year, another 25-year-old young man came to see me. He was Jewish, and he indicated that he wanted to start a high technology firm, and would like my counsel. The same lawyer who worked with me worked with him. Within 2 weeks, he had capital of $1 million.

I think that those are vivid evidences of our access or lack thereof to capital. We talk about the NASA situation with the small business firms, and we ask the question, would the smaller firms want a piece of the pie of 1 percent that the 11 firms have? Then I would also ask the question, why would they not ask could they get a piece of the 50 percent that the top 5 has?

I would also state that I would be willing to throw in my 8(a) certification, if sole source contracts that are awarded to all of the non-8(a) firms were to be made competitive. I believe that I would win my share. But that is not the American way. We are asking to participate in the American way.

Thank you, Mr. Chairman, and members of the Small Business Committee.

[Mr. Farrington's additional submission for the record follows:]

NAACP

April 15 & 16, 1983

North Carolina

Business Advocacy Program

Black Business Support Group

Introduction

The Black Business Support Group (BBSG) firmly believes that permanent economic gains made by Black people in this country will come about as a result of our sharing in the free enterprise system as business owners. We believe that equitable employment opportunity is a right to be shared by all Americans. Historical and current data tell us, however, that this right cannot be exercised without the benefit of greater business ownership and success, and without the ability of Black businesses to compete on an equal basis within the national and international marketplace. The social, physical, environmental and educational problems of the minority community are an integral part of the problems of the cities and states of this nation. They are exemplified through the high cost of welfare, unemployment and law enforcement in the economically disadvantaged urban areas, in which a high percentage of minorities reside. These problems are but a reflection of the depressed figures on the "bottom line" of minority businesses.

These national problems will be reduced in direct ratio to increased strength and capitalization of minority businesses. While re-investing in their own growth and development, minority businesses will generate monies into the minority community toward its growth and development. It is critical to the improvement of the national economy and to a resolution of some of the nation's most serious problems, that existing Black owned businesses be developed to their fullest capacities, and that new minority-owned ventures be encouraged and brought to fruition as rapidly as possible. Black business leaders must be given an opportunity to create a path to economic parity within Black communities if we are to believe in the free enterprise system.

NAACP BLACK BUSINESS ADVOCACY PROGRAM

The Black Business Support Group (BBSG) to the NAACP

In the summer of 1982, a group of Black business owners convened at Pineview Retreat in Chapel Hill, North Carolina to focus on the problems confronting Black business development and the relationship of those problems to overall economic development and employment within the Black community.

During the Pineview Conference, discussions were held regarding the alarming economic trends within the Black business community. For example, Black consumers purchase approximately $150 billion worth of goods and services from non-Black corporate America. However, non-Black corporate purchases of goods and services from Black owned firms represent less than one percent of this amount. Additionally, the public sector procurements from Black owned businesses have been approximately one percent of their total procurement dollars. These factors have significantly contributed to the economic blight within Black communities, i.e., lack of a business base, high unemployment and hopelessness.

The Pineview Conference participants agreed that the challenge represented by these problems and statistics required the mobilization of Black business and Black communities throughout the country around a well defined set of initiatives. Furthermore, that the initiatives developed be implemented at the national, state and local levels. As a result of the Pineview meeting, the Black Business Support Group to the NAACP was formed.

The BBSG selected the NAACP as the organization to work with and support because of its institutional standing in the community, its historic record of advocacy and its extensive network of membership based affiliates.

How the BBSG Interfaces with the NAACP

BBSG member companies function as a support group for the NAACP Black Business Advocacy Program component of the Operation Fair Share instituted by the NAACP in December 1981. The four objectives of Operation Fair Share are to:

1. Increase Black representation on corporate boards.

2. Increase Black corporate employment.

3. Provide upward mobility for Black employees.

4. Increase procurement opportunity for Black businesses.

The NAACP Black Business Advocacy program will achieve the objective of increased procurements and serve to educate the NAACP membership on issues crucial to the development of the Black business community. The BBSG donates the funds necessary to conduct the NAACP Black Business Advocacy Program in addition to providing support for other NAACP activities, particularly voter registration and voter education.

The BBSG's Program

The BBSG developed a set of eight initiatives which address vital issues crucial to Black business development. These initiatives are being implemented through the Black Business Advocacy Program of the NAACP with the support of the BBSG. The initiatives are structured to establish minority business as a national priority and assure that policies and practices in the public and private sectors are consistent with minority business development objectives.

Initiatives of the Black Business Support Group are being implemented to achieve:

1. Establishment of minority business development as a national priority.

2. Enforcement of contracting and subcontracting compliance by the public and private sectors.

3. A strengthened and expanded SBA 8(a) minority business set-aside program.

4. Greater access to capital and credit.

5. Private sector procurement by Black firms.

6. Development of large Black businesses.

7. Incentives for high-technology Black-owned firms to locate in Black communities.

8. Establishment of a non-8(a) minority business set-aside program.

These initiatives will be fully discussed during the conference.

INITIATIVE 1

Minority Business - A National Priority

The Reagan Administration should establish Minority Business Development as a priority. Its policies and programs throughout all Federal agencies should clearly specify and dictate increased goals for minority business opportunity. These policies and goals must result in an increased share of Federal procurements. Governmental action that may impact Minority Business Development should be assessed to determine if such action is consistent with Minority Business Development as a priority.

Background

While other sectors of the American business community rise and fall with the changing conditions of the U.S. economy, minority business enterprise has been in a constant state of depression. The minority business community has been plagued by structural underdevelopment which has been sustained by a lack of access to capital, credit, effective technical assistance and an equitable share of public and private markets. Results of a recent poll of twenty-four Black companies based in the Washington, DC metropolitan area revealed that the average number of employees laid off by each company since January 1981 was twenty-six; half of the companies have lost one-third of their work-forces or more and thirty percent of the firms suffered a fifty percent reduction in their dollar volume of Federal 8(a) contracts.

The impact of this situation is felt most keenly by Blacks as well as other minorities in America which have had to face high unemployment and massive budget cuts in Federal human services programs. In addition to the absence of a strong, job creating minority business sector, minority communities have

also been crippled by corporate disinvestment and an exodus of majority-owned companies. Large manufacturers have relocated plants out of center cities and away from areas where most of America's Black population is concentrated. Similarly, most majority-owned "start-up" small businesses, which are a major source of job creation, are located in the suburbs.

It is the national interest of the United States that the Federal government take a leading role in fostering minority business development. A strong community of well developed minority businesses can provide thousands of jobs, contribute to Federal, state and local tax bases and be a source of investment capital. Funds committed to support minority business enterprise development are only a small fraction of the expenditures for Federal domestic programs. A viable minority business sector has the potential for reducing the long term need for several Federally funded social services programs.

Minority business enterprise development must be among the president's highest priorities. The president should make each agency head responsible for executing a policy of constructive intervention to break the patterns of structural underdevelopment. The 8(a) contract procurement and business assistance program administered by the Small Business Administration and other Federal programs designed to foster the advancement of minority business enterprise should be accelerated to the fullest extent to support the development of numerous, viable and fast growing minority business enterprises. The Federal government should provide minority entrepreneurs with inducements and incentives to start new businesses. The full weight of the Government should be employed to compel large prime contractors to expand their subcontracting transactions with minority companies. An effective, coordinated policy well executed by the president and executive agencies can bring the minority business community into full partnership within the business and corporate sector of America.

INITIATIVE 2

Subcontracting Compliance

Federal government prime contractors must be made to adhere to the law as stipulated in Section 211 of Public Law 95-507 as regards subcontracting with small and minority-owned small businesses. The Reagan Administration should enforce this law to the fullest. If Federal prime contractors adhere to the subcontracting provision as outlined in Public Law 95-507, government spending should correlate with increased hiring by minority businesses. Governmental action must be taken to alleviate state and local government inequitable procurement practices (including contracts and grants) which also weaken the intended purpose of Public Law 95-507. Remedial measures for such disparate treatment of minority businesses must be addressed via firm executive orders or legislative enactments.

Background

During the past year, we have observed a significant increase in the number of Federal prime contractors that have been found to be in some manner of non-compliance with legislative subcontracting requirements under Section 211 of Public Law 95-507. The law requires submission and execution of plans by prime contractors for utilization of small businesses and small business concerns owned and controlled by socially and economically disadvantaged individuals.

Total Federal procurement in FY 1981 was $108.1 billion. Forty-five billion dollars of this total was subcontracted out by prime contractors. Minority firms reportedly received $910 million or two percent of the $45 billion in subcontracting. This two percent is probably overstated

because the $910 million figure represents in part, dollars which prime contractors estimated they would spend with minority subcontractors, not total dollars actually spent.

In view of the emphasis of the Reagan Administration on decreased dependence of minority businesses on Federal contracts, we feel such subcontracting opportunity is clearly consistent with this objective. The opportunity for a minority concern to subcontract with a prime is seen as a vital first step to decreasing that concern's dependence on Federal requirements as well as to facilitate its transition to performance within the private sector. It has also been demonstrated that prime contractors experience savings as high as 38 percent through the use of small business subcontractors. The requirements of public law, the incentive of savings to government and increased minority business partnership with the private sector are three compelling reasons for more effective administration of the subcontracting program. As an important step, we recommend that the SBA implement procedures for effective coordination between its minority business development program and the subcontracting office of the SBA.

INITIATIVE 3

A strengthened and Expanded 8(a) Program

The Small Business Administration 8(a) program has been the cornerstone of the Federal Government's Minority Business Development Program during the past decade. It has been successful in developing a number of "government prime contractors" within the ranks of minority businesses. This has been a historical achievement. In keeping with the Reagan Administration's philosophy of developing and emphasizing the private sector, the 8(a) program becomes most critical to minority business. Accordingly, the 8(a) program should be strengthened and expanded in all areas.

Background

The 8(a) set-aside program of the U.S. Small Business Administration for over a decade, has been the principal government vehicle for assisting the development of minority business opportunity. Under this program, Federal agencies "set-aside" selected procurements for the SBA as the prime contractor. The SBA, in turn, subcontracts the procurements to 8(a) companies who have qualified as being socially and economically disadvantaged. At present, there are approximately two thousand companies in the 8(a) portfolio of the SBA.

An overview of the FY 1981 MBE procurement will put the 8(a) program in clearer perspective. According to the SBA, Federal procurements in FY 1981 totaled $108.1 billion. During the same period 8(a) direct procurements totaled $1.74 billion or 1.6 percent. Non-8(a) MBE direct procurements totaled $1.44 billion or 1.3 percent. Total 8(a) and non-8(a) MBE procurement was $3.18 billion or 2.9 percent of total Federal direct procurements. If we include the reported $910.5 million

or 2.0 MBE percent of $45 billion in subcontracting by Federal prime contractors, the total MBE procurement for FY 1981 was $4.09 billion or 3.7 percent of total Federal procurement.

Administration of the program over the years has fallen far short of the level and quality of effort necessary for the development of companies in the 8(a) portfolio to a level of maturity that provides maximum assurance for their successful continuation as corporate entities in the general marketplace. Continuing dialogue between the minority business community and officials of the Small Business Administration since the inception of the 8(a) program has not resulted in the quality of program administration we consider necessary for effective program implementation.

The passage of P.L. 95-507 in October 1978 provided a statutory basis for SBA to provide "maximum practicable opportunity for the development (emphasis added) of small business concerns owned by members of socially and economically disadvantaged groups". P.L. 95-507 provides SBA with an array of program tools for fostering minority business development. Unfortunately, SBA has not applied sufficient management initiative to aggressively implement the Congressional mandate.

There are several key problem areas in the administration of the 8(a) program which if corrected will greatly improve the prospects for effective development of firms in the 8(a) portfolio. Among these are: (1) lack of clear policy guidelines for program certification, continuation and completion based on quantifiable and economically defensible criteria; (2) the lack of program staff who have sufficient experience and working knowledge of "real world" business practices and problems; (3) an insufficient level of funding to adequately staff the various elements of the 8(a) program; (4) a definite weakness in SBA's advocacy of minority business development; and (5) an inadequate perception by SBA of the need to differentiate the service requirements of 8(a) firms at varying levels of their development within the programs.

INITIATIVE 4

Greater Access to Capital and Credit

Lack of access to equity, capital and credit has historically been a key barrier for minority businesses. The financial community and the Federal government should establish a joint program to address this problem and make adequate capital and credit available. This is an immediate necessity if minorities are to participate in an economic system as business owners, who will rely less on direct government support.

Background

A May 1978 report of the National Association of Securities Dealers (NASD) cited the difficulties small businesses have in generating equity capital to support their growth. The report states in part:

> "...the longer a firm is in business, the more successful it is, and the larger its equity base, the easier it is for it to fill its financing needs from its own earnings, by selling additional equity or by borrowing. As a result, those that need capital the most, i.e., smaller companies in the early stages of development, experience the greatest difficulty in obtaining it. Because they are incapable of generating the capital needed to support their growth potential, small developing companies are forced to obtain outside assistance."*

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*National Association of Securities Dealers, Inc., Report of the Joint Industry/Government Committee on Small Business Financing - The Current Environment and Suggestions for Improvement, May 22, 1978, pg. 8.

No programs to help minority-owned businesses can succeed, unless those programs take into consideration the lack of accessibility to short and long term equity capital and credit markets, experienced by minority-owned companies. Minority business enterprises (MBEs) are a vital and growing component of the U.S. economy. Our contribution to the overall performance of the economy is dramatically illustrated in the number of jobs we provide, the level of investment capital we generate for the nation's banking system, and in the tax revenues we generate. Ironically, our limited access to capital and credit does not reflect our contributions to the financial community.

The Chamber of Commerce of the United States has estimated that every 100 new jobs created in the economy generates $481,000 in additional bank deposits.* Since the estimate was in 1975 dollars, the comparable figure for 1981 was $736,410.** Applying this amount to the estimated MBE employment of 1,081,045 in 1980, yields estimated/bank deposits of $7.961 billion.

According to the Banking Section of the Research and Statistics Division, Federal Reserve Board (April 23, 1981) the average member bank reserve requirement for demand deposits was slightly above 11 percent. The average reserve requirement on the time and saving deposits of banks was about 2.3 percent. This means that if all of the estimated $7.961 billion in MBE generated bank deposits were deposited in checking accounts, the receiving banks could have made loans amounting to $72.373 billion. This would have been more than adequate to

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*Chamber of Commerce of the United States, What New Jobs Mean to a Community, 1975.

**Calculated by inflating $481,000 by the percent change in the CPI between 1977 and March 1981.

finance the $72.0 billion* in crude oil imported into the United States in 1980.

However, had the entire $7.961 billion been deposited in savings accounts, loans of $346,130 billion would have been possible. This amount is more than sufficient to finance the purchase of 100 percent of the assets of the 14 largest U.S. industrial corporations. That group includes the nine largest oil companies, the two largest automobile manufacturers, IBM, General Electric and ITT.

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*Department of Energy, Energy Information Administration, Energy Data Operations, Office of Oil and Gas Statistics, Petroleum Marketing and Pricing Statistics Division, April 23, 1981.

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INITIATIVE 5

Minority Firms: Under-Utilized Suppliers

The private sector that sells to minorities as consumers must buy from minorities as suppliers. This has not happened to any significant extent despite Federal government "jawboning" during recent years. The NAACP considers it an obligation for major corporations to buy from minority businesses. The NAACP intends to use its power to withhold economic support of its constituents from major corporations that are least actively procuring goods and services from minority businesses.

Background

Black consumers purchase well over $100 billion worth of goods and services from non-minority corporate America. However, non-minority corporate purchases of goods and services from Black firms represent less than one percent of this amount. These purchasing practices of non-minority corporations are responsible in great part for the disproportionate reliance by the minority business sector on contract opportunity generated by government procurements. These practices will not change until the attention of the majority business community is focused realistically on the relationship of minority consumer dollars to minority opportunity.

The purchasing practices of fifty major corporations will be examined and communicated to NAACP constituents throughout the nation. The selected companies will also be examined to determine their compliance with the minority subcontracting requirements of government procurement policies. The NAACP intends to use its power to withhold the economic support of its constituents from those companies that are found to be least actively procuring goods and services from minority businesses.

INITIATIVE 6

Development of Large Minority Business Enterprises

The Small Business Administration must abandon its policy of terminating the participation of larger minority firms in the 8(a) procurement and assistance program. The Federal government should focus its resources toward the development of a critical mass of larger, fast growing minority companies. Such firms contribute to the economic well being of the nation and have a direct impact on the economic development of minority communities.

Background

At present, the Small Business Administration (SBA) is pursuing a policy of terminating the largest minority companies from participation in the 8(a) portfolio. Many of these firms employ hundreds of people and demonstrate excellent potential for growth and diversification. The SBA policy of terminating participation of these firms in the 8(a) program runs directly counter to the interests of the nation as a whole and its minority communities in particular. The impact of this action for most affected companies will be negative growth, and massive employee lay-offs. Some firms will fail. The majority of the laid-off employees will be minorities adding to the disproportionately high minority unemployment rolls.

The development of large, viable and fast growing minority business enterprises is in the best interests of the general economy. Such firms are an essential component to the economic development of minority communities. Therefore, the minority business development resources of the Federal government should be marshalled to foster the establishment of a critical mass of large minority firms in a variety of areas of business enterprise. As the society struggles through this period of

economic recession, all of the nation's resources must be brought to bear on the goal of economic recovery. Minority firms not only add to the total sum of national economic well being; they have a direct impact on the development of minority communities since they tend to locate their facilities in proximity to large minority population centers. Many tangible benefits accrue to the society from large minority business enterprises. Some of these benefits are as follows:

Employment - Small businesses create most of the new jobs in the U.S. According to the U.S. Department of Commerce figures, minority-owned businesses provided jobs to an estimated 1,081,095 persons in 1977. That figure is greater than the employment of the 19 largest U.S. oil companies and it exceeds the employment rolls of the four largest automobile manufacturers.

Federal, State and Local Tax Revenues - Minority firms paid an estimated $2 billion in Federal taxes in 1977 and about $500 million in state, local, import and excise taxes.

Sources of Investment Capital - The U.S. Chamber of Commerce estimated in 1981 that every 100 new jobs generated $736,410 in additional bank deposits. Using this estimate, minority businesses generated estimated bank deposits of approximately $8 billion.

Technological Innovation and Improvement - The contributions of minority inventors and scientists to the nation's technological superiority over the centuries is little known but documented. Elijah McCoy, Lewis Latimer, and Granville T. Woods for example, patented major improvements in the railroad and electrical industries. Garret A. Morgan invented both the gas mask and the traffic light in the early 20th century.

Support of Non-Minority Business Sector - About 250 Washington area firms spent nearly $25 million per year on office rental, about $4 million on copy/duplication machine rental and over $5.25 in telephone costs.

Human Capital Development - Minority firms provide their minority employees with technical, professional and managerial experience they would not otherwise receive in other sectors of the business community or in governmental agencies.

Other contributions of large minority business to the society include research and development; the creation of proprietary products and the letting of contracts to smaller firms. Executives of large minority businesses are often leaders in the community and role models to young people.

INITIATIVE 7

Provide Incentives for High-Technology Minority-Owned Firms to Locate in Minority Communities

Facilitate the development of well-planned, controlled business environments such as industrial parks and employment centers in low-income areas (exclusive of Enterprise Zones) which effectively reduce the costs and the risks of doing business in those areas.

Background

The reasons for this initiative are very compelling. It is quite tempting in this recessionary environment to blame the dismally high minority unemployment rates on cyclical factors which are expected to correct themselves when the entire economy recovers. The facts are overwhelming, however, that the huge numbers of unemployed minority Americans, particularly unemployed Black Americans concentrated in our central cities, are emerging as a permanent dependent sector of our national population which is increasingly desperate for sources of self-sufficiency. We need no innovation in this society to design the model source of self-sufficiency - that model is the small business.

Historical trends indicate that a strong economic recovery will only marginally help minorities. During the economic growth period from 1975 to 1979, when the official non-minority unemployment rate decreased from 7.8 percent to 5.1 percent, or by 34.6 percent, the official Black unemployment rate dropped from 13.9 percent to 11.3 percent or by only 18.7 percent. The current rate of non-white unemployment is 16.3 percent compared to 8.5 percent for whites.

More significantly, however, the unofficial Black unemployment rate has not been under 20 percent in the past five years (this rate includes those who want a job but no longer are actively seeking one as well as part-time workers who want full-time work). This rate currently exceeds 29 percent.

Historical trends further suggest that the problem of minority unemployment is likely to be even more severe in the future than it has been in the past. Not only has the size of the government labor force been contracting, but trends in the location decisions of large manufacturers as well as small business suggest that the jobs are going in one direction and minorities are going in another.

1. Large U.S. manufacturers which used to locate primarily in major metropolitan areas are increasingly relocating in remote areas (more than 200 miles away from major metropolitan areas). Contrary to popular belief, small businesses are the primary source of jobs for minorities and are the dominant creator of jobs in central cities. However, most small business start-ups (start-ups are the source of a high percentage of new jobs) are now in the suburbs as opposed to the central cities.

2. In contrast to nationwide patterns, preliminary 1980 census data indicate that Black Americans are continuing to concentrate in the central cities of metropolitan areas. More than 14 million Blacks out of a total of 26.5 million Blacks now live in the central cities of major metropolitan areas, while six million others live in the suburbs and rural fringes of those areas.

As programs providing relief to the dependent are decreased, and the size of the dependent population increases, the need for simultaneous programs of development targeted to that population becomes clear.

There is still an unfortunate lack of adequate data describing the current and historical condition of minority businesses. However, available data indicate that minority-owned firms provide jobs for more than one-half of one percent of the labor force, yet minority Americans account for more than 20 percent of the population. In 1977, nearly 3,500 minority-owned firms employed more than 50 employees. These figures represent an important opportunity for minority business development policy, for the under-utilized capacity in the minority business community represents a tremendous frontier of development, an under-utilized source of job creation, innovation, entrepreneurial creativity and competition in an economy facing massive needs for economic stimulation in the central cities.

Federal government policies seriously need to reflect an appreciation for the importance of the interlocking linkages between recovery of the U.S. economy, revitalization of economically depressed areas of our central cities, high minority unemployment rates, and minority business development programs.

INITIATIVE 8

Establishment of Non-8(a) Minority Business Set-Aside

There are many minority firms that are desirous of government business but for various reasons do not meet the eligibility requirements for 8(a) certification. An additional number of minority firms who could meet the eligibility requirements are denied access to the 8(a) program because of the apparent limitation of the current 8(a) portfolio to approximately 2,000 firms. The establishment of a competitive minority small business set-aside program would be considered a major initiative in the furtherance of minority business development.

Background

Federal agencies have failed to establish small business set-aside programs for minority firms that are not 8(a) certified. Many non-8(a) minority firms are small businesses that have limited their operations to the private sector and often do not require the full range of services available to the 8(a) firms. However, they do require special assistance in overcoming constraints in the marketplace which result from their minority status. These companies know very clearly that government contract opportunity has historically been an important vehicle for the development and growth of small businesses. They also recognize that it should not be necessary for them to become 8(a) certified in order to participate in Federal contracting opportunities. A substantial set-aside program for non-8(a) firms would assist greatly the efforts of such firms to access government contract opportunities and expand their markets in the private sector.

A set-aside program for non-8(a) minority firms is also vitally needed as a bridge to the general marketplace for firms

that complete the 8(a) program. Legislators and government administrators frequently overlook the fact that the purpose of the 8(a) program is business development. The need for providing post-program support to firms that may be ready to move beyond the 8(a) program has not been addressed adequately, nor has this need been given serious consideration as a crucial factor in the survival and maturation of companies developed within the 8(a) program.

Approximately 2,000 minority firms are currently certified to participate in contract opportunity generated by the 8(a) set-aside program of the U.S. Small Business Administration. While the use of certified firms must be strengthened and expanded, other minority firms that do not participate in the 8(a) program should also be used. However, Federal agencies have tended to look primarily to 8(a) firms in meeting their minority contract requirements. This has severely limited Federal contracting opportunity for thousands of non-8(a) minority firms. There are two important reasons for this limitation.

1. 8(a) contracts are much quicker to process and enable agency program managers to meet their procurement requirements in a more timely manner.

2. Federal agencies have made heavy use of 8(a) firms in their efforts to meet their MBE goals.

The establishment of a competitive minority small business set-aside program would be considered a major initiative in the furtherance of minority business development.

Mr. MITCHELL. Thank you, Mr. Farrington. One small observation and one question. You were so modest about your efforts on behalf of the poor which were publicized despite your protest.

Here is a firm that is doing well. It simply took a percentage of its profits to make sure that families were fed properly in a given area. It is my understanding that you did not want that made public, but it has been made public. I think that kind of spirit is totally admirable.

Now as to my question: A firm can be revised from the 8(a) program when the amount of 8(a) business that is being done, and private sector business that is being done exceeds the size standards. A combination of those two may make a firm too large. Therefore it would be graduated out of the 8(a) program. In evaluating the strength of an 8(a) firm, do you think that it is necessary to net out of the profit and loss statement sales and expenses attributable to the performance of 8(a) contracts?

Mr. FARRINGTON. I think that in the current determination of whether companies are ready for graduation from fixed term participation in the point system that SBA has. Yes, it would be necessary, as I stated in my testimony.

Mr. MITCHELL. To net it out?

Mr. FARRINGTON. Yes, I do. I think that it takes an enormous amount of effort to banish business that you have in a sheltered arena. It takes away from your total resources to go out and market. To say that because you have succeeded there, that you are now ready, to go out and market is not really the truth.

I have had consultants come to my company that worked with many of the larger companies, and they talk about the enormous task and the number of years that it takes for some of the nonminority companies to move from Government business into the private sector nongovernment, and the movement from the setasides today.

Now I have a philosophy that the bigger setasides are by nonminority companies, your white firms, and the small business setasides. So yes, I do, to answer your question specifically.

Mr. MITCHELL. Thank you.

Congressman McDade.

Mr. MCDADE. Thank you, Mr. Chairman.

I regret that I was not here to hear your statement. I will, of course, read it. And I want to join the chairman in commending you. I read about what you did in trying to help some of our fellow citizens who are suffering. I want to offer on the record my congratulations to you, and appreciation to you. Thank you.

Mr. FARRINGTON. Thank you. I would like to comment on that, and say that through our black business support group, we expect to make that a national effort. We feel that that is the type of thing that black firms would do in order to feed and care for our needy. I did not see any of the non-8(a) firms on the streets with me during Christmastime. Thank you.

Mr. MITCHELL. Good for you.

Mr. Daub.

Mr. DAUB. I appreciate that comment. I enjoy working with my brothers and sisters as a member of NAACP in the Omaha chap-

ter. We perhaps would be able to help you focus on some of our 8(a) firms out there who also participate in our organization.

Mr. FARRINGTON. We would be glad to have them.

Mr. DAUB. We have already had fine commendations, and I would add mine to it. Let me ask you. What did you mean where you talked about a more rational and logical set of criterion, do I take it that you suggest that your listing of the three points is the answer to that point? Is that what you are trying to get at?

Mr. FARRINGTON. I think——

Mr. DAUB. That they become the more rational set of standards?

Mr. FARRINGTON. Yes, that is true.

Mr. DAUB. Just so that I can relate your testimony.

Mr. FARRINGTON. Right.

Mr. DAUB. Now your point number two is: "It is almost impossible to develop the marketing resources to market outside of the sheltered 8(a) arena simultaneously."

Could you expand on that a little bit?

Mr. FARRINGTON. Sure.

Mr. DAUB. Is that an admission that there is probably a problem there no matter what we end up doing?

Mr. FARRINGTON. Let me answer your question. To succeed in the 8(a) program, you have to self-market anyway. The SBA really does not go out and find the business, and bring it to your lap, unlike many of the firms that supported Public Law 96-481 felt. So the resources required just to market within the 8(a) arena where you do have the setaside provision are enormous. And while you are trying to get those contracts in order to bring your management and your balance sheet, it is almost impossible to go out to market to those private sector firms simultaneously.

Because I want to go back to my example that I gave you, my situation. If I had been able to receive $1 million in equity, I would not have had that problem. I could have gone on the market, and say go get them, boys, but I cannot do that. So it is a phased process; so that is the answer to your question.

Mr. DAUB. How long did it take you to become an eligible 8(a) firm. Do you remember back when you started the paperwork, was it 1 year, or 2 years?

Mr. FARRINGTON. Oh, I think about a year.

Mr. DAUB. About a year?

Mr. FARRINGTON. Yes.

Mr. DAUB. And that was in what year, do you recall?

Mr. FARRINGTON. Oh, I think in 1972-73.

Mr. DAUB. One of the earlier years?

Mr. FARRINGTON. Yes.

Mr. DAUB. And today do you have any 8(a) business?

Mr. FARRINGTON. Yes, sir.

Mr. DAUB. How much of a percentage of your total business would you guess just relative to your total aggregate is currently 8(a)?

Mr. FARRINGTON. I would say about 80 percent.

Mr. DAUB. About 80 percent.

So you have been in the program about 10 years?

Mr. FARRINGTON. Yes.

Mr. DAUB. And about 80 percent of your business is 8(a). Now hypothetically, you do not have to go into detail here. Would we ever get to a point where you had a ratio of say 50–50, or 60–40 going the other way of non-8(a) business to where you could start to divert some of your resources to marketing in the private sector? Do you follow me. I am just trying to get a clarification. You have had experience with it.

Mr. FARRINGTON. I certainly understand your question.

Mr. DAUB. Yes.

Mr. FARRINGTON. I would certainly answer affirmatively. Currently, as opposed to marketing primarily 8(a) business, we are marketing and bidding non-8(a) business. And we have set a goal of so many dollar amounts of proposals that we get out annually. We hope to realize a certain percentage of that.

So yes, I fully expect, albeit the current situation, to be able to succeed without 8(a) business. However, I do want to add that I am in full support of a minority business setaside, a law whereby minority business, like small businesses—you know, you go into DOD, and you ask about how they are doing in small business. They have a 20-percent goal that they shoot for. That is the goal that has guaranteed small business participation in DOD business, and some of the other agencies.

I feel again that that is the American way, and if that goal is not there for minority owned firms, then I do not think that we will participate. Although I think that I certainly will be able to work out of the 8(a) situation, I do support a minority business setaside.

Mr. DAUB. Of course; so do I. What I am trying to get at is point number two where you first indicate the problem of moving your resources to competing for non-8(a) business while engaged in a substantial amount of 8(a) resource use. Then you indicate that you have had a 10-year period of time.

Here after 10 years now with all of the efforts that you are making, you are still committing your total business planning resource day, say 80 percent of it, to make sure that you are doing a good job with the 8(a) contracts that you have. That inhibits your ability to go over and spend some of those same people's time being not 8(a).

Is that not what your point is?

Mr. FARRINGTON. Yes, sir.

Mr. DAUB. How will you ever get weaned?

Mr. FARRINGTON. Well, I think that I just explained that. The process that we are going through now by bidding on jobs that are non-8(a). We expect to succeed at that. However, I would also go back to the other points that I made about the need to build up to be bankable.

I listened to the conversation up here about bankability and some type of model to allow for that. I would say 13 years ago when I tried to get started, I had that situation with getting equity capital. Once I got to a point in my sales last year where I had a good balance sheet, and we were bankable, my bank looked at me and said hey, you look different, and we are going to decrease the amount of credit to you, which would in essence shut off our sales.

Mr. DAUB. If you are too good, and they shut you off.

Mr. FARRINGTON. So what we did, we were able to find another bank that through taking the Government receipts and sales which were from 8(a), would allow me to obtain credit, and also through advance payments of 8(a). So you just cannot take a single factor, and say can you not go out, because there are other extenuating circumstances.

Mr. DAUB. Do you see any conflict in your point number two based upon the very vivid testimony of your own personal circumstance, where if you do in fact not count your 8(a) more easily collectable than private sector, that you put all your money in and that sort of thing, and indeed you may have some difficulty getting credit lines that you need for ongoing business if you did not count it for graduation purposes?

Mr. FARRINGTON. I am not sure that I understand your question?

Mr. DAUB. If you have got to count it, you just said that you had to go to another bank. When they took a look at your 8(a) business, then they were able to figure out some more ways to give you credit, right?

Mr. FARRINGTON. But that was not the question. The other question was whether it should be discounted for graduation.

Mr. DAUB. Should it?

Mr. FARRINGTON. Yes, sir. The question was not in terms of whether it should be discounted for access to capital purposes.

Mr. DAUB. But 8(a) was designed to get you started, and was not designed to give you access to capital, wasn't it?

Mr. FARRINGTON. Well, I do not know how you separate the two, sir. How can you separate getting started in business, and separate your access to markets and access to capital?

Mr. DAUB. I agree that you do not separate them ultimately. But the purpose is not to become a financing institution, is it, for your business?

Mr. FARRINGTON. Well, again, I am kind of asking you a question for clarification. Because the 8(a) program recognizes that there was a lack of access to credit, and established advance payments.

Mr. DAUB. I just want to find out where you think that we ought to be going.

Mr. FARRINGTON. Whether the objective was to get you started through access to capital, or markets, or both. The objective is to get you started. That is why you cannot separate the two.

Mr. DAUB. OK.

Mr. FARRINGTON. As a businessperson, I have been able to do that.

Mr. DAUB. Please understand that Morris West wrote a book called "The Devil's Advocate." If I do not understand where you think 8(a) has been in your own case, or whether it ought to be, then your general testimony about the bill, which these hearings are all about, then I do not know what 8(a) might in your mind end up being a year from now with different standards either with or without graduation, or with or without discounting.

What you are saying to me is that you view them like this. You view an access to capital to be an 8(a) certified firm. Then that solves one of the biggest problems that the minority business has, to get into that program. It becomes something of value then, right. It becomes a bankable asset itself.

Mr. FARRINGTON. I view the 8(a) program as the only means that the Federal Government has right now for minorities to have access to the free enterprise system as business owners. Access to markets and access to capital has to go hand in hand with that access.

Mr. DAUB. Should firms, such as some of the previous witnesses testified, should they be left in the program for as long as there is an unreasonable amount of business being witheld from minority firms?

Mr. FARRINGTON. Let me answer that question two ways.

As I stated in my testimony, I would be happy to go before the Administrator of SBA to graduate today. If you would ensure that my competitors did not sop up 80 percent of the business on sole source. I would be able to do that. I say that publicly.

So, No. 1, I would question whether there are many companies that cannot get in because of existing 8(a) firms. I think that there was a ceiling, whether it was de facto or whatever of about 2,000 firms. It was my understanding that through the fixed term participation, that we lost about 400 companies. I still do not think that we are up to that 2,000 number. I am sure that SBA will speak of that. So I do not think that that is the problem.

Mr. DAUB. So, is it a yes then? Are you saying let firms stay in 8(a) basically in a way so long as there is not a fair proportion of Government business being set aside generally now for minority firms or let me say disadvantaged? I have got a lot of Hispanics in my district, too. We have talked about with all due respect about blacks and other minorities.

Mr. FARRINGTON. There are a lot of disadvantaged firms which are not black either.

Mr. DAUB. You bet you.

Am I putting words in your mouth now to say that the answer then to my question would be yes?

Mr. FARRINGTON. I am going to go back to my testimony, because I think that I answered that specifically.

Mr. DAUB. If you support the bill, then there is going to be a day when people graduate, right?

Mr. FARRINGTON. I do support the bill. In my testimony I stated that I call upon the "Federal Government to declare disaster areas, and to suspend any further graduation of 8(a) firms, to reinstate all of the companies graduated to date, and to begin a campaign for these companies to bring the American dream to blacks and other minorities within this country."

I think that you and I disagree on the purpose of the 8(a) program initially, but my feeling is that those companies graduated should be reinstated. Graduation should be frozen. We have disaster areas within our communities.

I cannot understand why anyone cannot see these companies as viable, too, and to help resolve their problems. So that is what I am basing it on. I am not basing it on the percentage of the dollars in the markets, and who gets what.

To answer your question specifically, I want to come back to my other point of the long-term development of the minority business community, and the business owners, so that they would not need

a Minority Business Act. That is not the purpose of my testimony today.

Mr. DAUB. Let me conclude by saying that I agree with your conclusion that the Federal Government should be the catalyst for guaranteeing the opportunity for full participation in the free enterprise system. I would then ask you to examine, for example, the 19, or 20, or 21 firms that have been graduated, or terminated, or kicked out, or whatever you want to say, and ask yourself if under the criterion of the new legislation that we are looking at, if any of those firms were in a position to have fulfilled those criterion, and ought they not be out of the program. I think that that would be something later on just for you to look at.

Mr. FARRINGTON. Assuming that this bill is passed——

Mr. DAUB. Yes.

Mr. FARRINGTON. What criterion is set up. Yes, sure.

Mr. DAUB. OK; that is great. I appreciate very much the chance to exchange ideas, and find out where we can go with it.

Mr. FARRINGTON. Thank you.

Mr. DAUB. Thank you, very much.

Mr. FARRINGTON. Thank you, Mr. Chairman.

Mr. MITCHELL. Thank you. It is always a pleasure, Mr. Farrington.

Congressman LaFalce, do you have any questions?

Mr. LAFALCE. No questions.

Mr. MITCHELL. I am delighted that you were able to join us. I am in favor of the graduation of firms. I want it to coincide with the day when Parren Mitchell runs for the Presidency of the United States and when he will be judged on his meritability, intellect, charm, and there will be no reference to skin color.

Mr. DAUB. Mr. Chairman, we promoted you to the Cabinet yesterday, and now you are talking about the Presidency.

Mr. MITCHELL. That is the thrust of minorities.

Mr. Sanders, the Administrator of the Small Business Administration. Thank you, very much, for being here. If you bring some staff up here that will be fine.

TESTIMONY OF JAMES C. SANDERS, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION; ACCOMPANIED BY ROBERT L. WRIGHT, ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND OWNERSHIP DEVELOPMENT, SBA

Mr. SANDERS. Thank you, Mr. Chairman. I would like to have my Deputy, Mr. Herrera sit up here with me, and Mr. Wright, who as you know, is our Associate Administrator in charge of the MSB program.

Mr. Chairman, are you starting to take collections or accept donations for your presidential campaign?

Mr. MITCHELL. There might be some question about doing that in terms of the Federal election laws that are now on the books.

Mr. DAUB. Anything, sir, as long as it is not on Federal property.

Mr. MITCHELL. Yes, sir, please proceed.

Mr. MCDADE. Before you start, Mr. Chairman, with your permission, what are your intentions in terms of time?

Mr. MITCHELL. The intent is to try to finish up. We have Mr. Sanders and, I think, four other witnesses.

Mr. McDADE. I just want to express my appreciation for you being here, and to tell you that I have an appointment at 12:30, which I must keep. I will let the other witnesses know that I am going to have to leave right in the middle of your testimony, and it ought not to be interpreted in any way.

Mr. MITCHELL. Thank you, Mr. McDade.

Mr. LaFalce.

Mr. LAFALCE. Before the witness begins, I want to say that I am sorry that I could not have been here earlier, but there were four other subcommittees that I belong to which were meeting this morning, one of which I was chairman of, so I had to be at that one. I came directly from there to here. I have a luncheon meeting with Governor Como at 12:30, so I too will have to leave in the midst of your testimony for which I apologize.

Mr. SANDERS. I have an appointment at the congressional dining room at 1 p.m. Well, anyway, thank you for telling me that. I will try and shorten this, Mr. Chairman, by submitting my statement for the record, and simply taking the salient points from my testimony, if I may.

Mr. MITCHELL. Your entire statement is submitted for the record.

Mr. SANDERS. Thank you for inviting me to participate in your legislative hearings on H.R. 863. This bill would drastically alter the current structure of the SBA's section 8(a) program and would, if enacted, repeal Public Law 96-481, which established fixed program participation terms.

I have already gone on record in opposition to this bill as it was introduced in the 97th Congress. I welcome the opportunity to revoice my objections to the bill, and discuss the issues.

Mr. Chairman, allow me to begin by restating the purpose of the 8(a) program as set forth in Public Law 95-507, a law that remains intact under your proposed legislation. The law is intended to assist socially and economically disadvantaged individuals and business firms owned by such persons by fostering business ownership, promoting competitive viability, and clarifying and expanding the Federal Government's procurement program as it relates to such firms.

Let me say that I strongly believe in these purposes, and the mechanisms that the Congress has provided to assist minority small business. While competition is the life blood of our economy, it has long been recognized that special efforts must be undertaken to assist those individuals who have traditionally been denied access to the benefits of our economic system.

We at the Small Business Administration believe that the 8(a) program was designed to provide the opportunity for business advancement to the maximum practicable number of entrepreneurs. Public Law 96-481, in recognition of limited agency resources and the lack of incentive for firms to exit in the program requires that all 8(a) firms be subject to a fixed period of program participation, thus transforming the open nature of the Public Law 95-507 program into one which is available to eligible entrepreneurs for a limited period of time.

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Mr. Chairman, let me reemphasize the three critically important elements which provide our philosophical basis for implementation of the 8(a) program. First of all, the opportunity for business success. The 8(a) program is designed to provide an opportunity for access to important business development tools which include sole source Government contracts, business development expense, advance payments, and management and technical assistance.

As one 8(a) firm president recently described it, 8(a) provides his firm with a passport into new markets which otherwise would be closed to him. I believe that it is this opportunity that most small minority business operators are looking for.

Second, our aim is to provide this opportunity to the broadest possible number of small minority businesses. Not only does the law speak to the maximum practicable opportunity, but also the President as Chief Executive in implementing the law has spoken of affording the opportunities of our program to more participants.

In his December statement on minority business, the President set a goal of directly assisting in the creation and development of 60,000 minority businesses over the next 10 years. The 8(a) benefits must therefore be made available to a greater number of firms.

I have already announced and communicated in no uncertain terms to all SBA's District Directors and Regional Administrators my goal of certifying 500 new firms as 8(a) by April 1, 1984.

Mr. Chairman, very often my duties require my presence in many parts of the country. As you are well aware, when one leaves the atmosphere of Washington, you do acquire a different perspective. When I am on the road, individual minority entrepreneurs have expressed to me their interest in the 8(a) program and their frustration in attempts to be certified.

Mr. Chairman, I am sure you know many Members of this body as well as members of the general public are rightfully upset that only a small fraction of minority businesses receive the benefits of 8(a) program participation. This leads to the third important element of the 8(a) program. The opportunities that it provides cannot continue indefinitely to a relatively small number of firms. So this brings us to the fixed period of program participation.

Congress took a courageous and important action by passing Public Law 96-481 in October 1980. This law required the SBA to establish a fixed period of program participation for all 8(a) firms. It was this recognition that firms should be given an opportunity, but one that was limited, which sets the stage for setting program benefits for the greatest number of firms.

Federal procurement dollars are limited and the competition for those dollars is fierce. We cannot expand the number of participants beyond our reasonable expectation of providing these firms adequate support. It would be the unkindest action of all to heighten the expectations without being able to deliver.

That, Mr. Chairman, is why program completion is important. Without firms leaving the program, we cannot expand our efforts to a greater number of firms.

The establishment of fixed program participation terms for incoming firms is an incentive for the firms to make the most of the program while they can.

Faced with a time certain for program exit, entrepreneurs will maximize their time in the program, take advantage of every opportunity that it affords, and will have an incentive to obtain the expertise, experience and the contacts necessary for the operation of a successful business.

The underlying, but we believe, faulty assumption of the bill that you are considering, H.R. 863, is that Public Law 95-507 was intended to assure the competitive viability of participating minority businesses. On the contrary, the law speaks only in terms of providing an opportunity, fostering business ownership, and promoting but not ensuring competitive viability.

Your bill would have the necessary effect of limiting program benefits to a select few businesses. SBA has finite resources which are already stretched to the limit by the current demands of the program.

The proposed legislation would require intensive attention directed at a relatively small number of firms for an extended period of time. We believe, on the other hand, that our resources should be channeled to provide assistance to as many disadvantaged individuals as we possibly can.

Under the proposed legislation, Public Law 96-481 is repealed. Your committee and the Senate Small Business Committee labored long and hard over this law. Since its enactment in 1980 we, too, have committed a large amount of time and effort to the proper implementation of the law and the regulations and our procedures.

We feel to abandon these efforts now before the results of implementation can be adequately or fairly judged would be a disservice to us and to the disadvantaged businesses participating in our program.

We have no argument with the concept of establishing targets, goals and objectives as required by Public Law 96-481, which are related to overcoming economic disadvantage in order to promote firms' competitiveness. Nor do we disagree with the idea that financial, marketing, and management aspects of the business must be the focal points for SBA assistance.

We do, however, question the idea that these criteria can be specifically quantified and expressed numerically as the bill would have us do.

We object to the bill's inclusion of graduation procedures under the administrative hearing provisions of section 8(a)(9) of the Small Business Act. SBA should not have to hold an administrative hearing which is costly and time consuming for all parties every time that a concern who has participated in the program is capable of competing without the benefits of the program. Such concern should pass from the program as a matter of administrative action, thereby giving other worthy concerns a chance to gain program benefits.

We are also confident that under the termination and graduation criteria contained in the bill few firms would ever be terminated or graduated from the program. Even if we were able to subscribe to the idea that the criteria of competitiveness can be quantified, and we do not subscribe to that theory, the bill's termination proposal requires an incredibly high threshold for the institution of such action.

Mr. Chairman, I believe that we have given your committee sufficient specific reasons for our opposition to the bill. Perhaps the most important reason for our opposition is our strong conviction that what the 8(a) program needs is a period of normality. We need to have time to make the previously enacted legislation work.

I believe that we have dealt successfully with many of the major problems with which this program was confronted. No longer does the program suffer so much from widespread infiltration of front companies, scandalous abuse of advance payments, business development expenses, and ill-defined goals and purposes.

We have been able to execute and administer an astonishing $8 billion plus in Government contracts since the program began, more than half of which has occurred in the last 4 fiscal years. We now have an opportunity to turn our attention to developing and refining our standards, our goals and procedures; improving the management, providing for equitable treatment of all firms and expanding the number of program participants.

In order to continue our efforts in this area, we need a period of normality. Mr. Chairman, we are making progress in many important areas. We recently issued instructions to the field to expedite the application processing procedures.

From now on, we project that the average length of time to process an application will be reduced to a period of 70 days as opposed to the upward of 6 months that the procedures currently consume. As I mentioned before, I have established a goal of 500 new entrants to be added to the program by April 1984.

I am very serious about expanding the program benefits to a wider range of disadvantaged entrepreneurs, and I have communicated my commitment to this goal to those persons at all levels of the agency responsible for ensuring that we meet the goal. This goal, incidentally, Mr. Chairman, would not be possible under H.R. 863.

An important interagency agreement was executed last year with the Department of Commerce, and that agreement is beginning to work. The agreement requires MBDA funded minority development centers to assist minority firms in preparing applications for 8(a) program participation. In addition, the agreement provides for a major interagency coordinated effort to assist 8(a) firms as they transition out of the program.

We strongly believe that we must protect and foster the very sizable investment that we have made in many of these firms. We have entered into a partnership with the Commerce Department to insure that section 8(a) firms are eased into the free marketplace.

SBA will be providing 8(a) firm profiles to MBDA at least 1 year prior to their program exit. MBDA personnel and MBDC's will work together with SBA personnel to assure continuity of the various types of assistance necessary to promote the firm's success.

Mr. Chairman, we have no less than the support and the leadership of the President of the United States, not only with regard to the need to support transitioning firms but also in the procurement area. For the first time in the history of Federal minority business effort in this country, oversight responsibility for ensuring that procurement goals are met will rest with the Cabinet Council on

Commerce and Trade and with the Secretary of the Department of Commerce.

Procurement goals have been raised significantly, and the President has called upon all procuring agencies to meet these goals. Mr. Chairman, we know that you and your committee share our interest in this program and its future. Our joint roles are to insure that the Government fosters an environment for disadvantaged entrepreneurs which will result in their enhanced business capabilities.

We must provide that opportunity for a significant number of minority individuals if the disadvantaged population is to obtain social and economic equality. The section 8(a) program is now designed to bring that opportunity to more and more individuals.

We believe that we are on the right track with that philosophy. The tragedies of the past neglect should not bind us to repeat these mistakes. My statistical information is attached, Mr. Chairman.

Thank you for inviting me to testify.

[Mr. Sanders' prepared statement with attachments follows:]

Prepared Statement of James C. Sanders, Administrator, Small Business Administration

THANK YOU FOR INVITING ME TO PARTICIPATE IN YOUR LEGISLATIVE HEARINGS ON H.R. 863. THIS BILL WOULD DRASTICALLY ALTER THE CURRENT STRUCTURE OF THE SMALL BUSINESS ADMINISTRATION'S SECTION 8(A) PROGRAM AND WOULD, IF ENACTED, REPEAL PUBLIC LAW 96-481 WHICH ESTABLISHED FIXED PROGRAM PARTICIPATION TERMS FOR 8(A) FIRMS. I HAVE ALREADY GONE ON RECORD WITH MY OPPOSITION TO THE BILL AS IT WAS INTRODUCED IN THE 97TH CONGRESS. I WELCOME THE OPPORTUNITY TO REVOICE MY OBJECTIONS TO THE BILL AND TO DISCUSS THE ISSUES IN THIS FORUM.

PURPOSE OF THE 8(A) PROGRAM

MR. CHAIRMAN, ALLOW ME TO BEGIN BY RESTATING THE PURPOSE OF THE 8(A) PROGRAM AS SET FORTH IN PUBLIC LAW 95-507, A LAW WHICH REMAINS INTACT UNDER YOUR PROPOSED LEGISLATION. THE LAW IS INTENDED TO ASSIST SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS AND BUSINESS FIRMS OWNED BY SUCH PERSONS BY FOSTERING BUSINESS OWNERSHIP, PROMOTING COMPETITIVE VIABILITY, AND CLARIFYING AND EXPANDING THE

FEDERAL GOVERNMENT'S PROCUREMENT PROGRAM AS IT RELATES TO SUCH FIRMS. LET ME SAY THAT I STRONGLY BELIEVE IN THESE PURPOSES AND THE MECHANISMS AND TOOLS CONGRESS HAS PROVIDED TO ASSIST MINORITY SMALL BUSINESS. WHILE COMPETITION IS THE LIFE BLOOD OF OUR ECONOMY, IT HAS LONG BEEN RECOGNIZED THAT SPECIAL EFFORTS MUST BE UNDERTAKEN TO ASSIST THOSE INDIVIDUALS WHO HAVE TRADITIONALLY BEEN DENIED ACCESS TO THE BENEFITS OF OUR ECONOMIC SYSTEM.

MR. CHAIRMAN, THE VERY FIRST STATEMENT THAT IS INCLUDED IN P.L. 95-507 IS THE FINDING THAT "THE OPPORTUNITY FOR FULL PARTICIPATION IN OUR FREE ENTERPRISE SYSTEM BY SOCIALLY AND ECONOMICALLY DISADVANTAGED PERSONS IS ESSENTIAL IF WE ARE TO OBTAIN SOCIAL AND ECONOMIC EQUALITY FOR SUCH PERSONS AND IMPROVE THE FUNCTIONING OF OUR NATIONAL ECONOMY..." ADVERSE CONDITIONS IMPEDING SUCH PERSONS' PROGRESS, THE LAW FINDS, "CAN BE IMPROVED BY PROVIDING THE MAXIMUM PRACTICABLE OPPORTUNITY FOR THE DEVELOPMENT OF SMALL BUSINESS CONCERNS OWNED BY MEMBERS OF SOCIALLY AND ECONOMICALLY DISADVANTAGED GROUPS." THE LANGUAGE OF THE LAW I HAVE JUST CITED IS CLEAR. WE AT THE SMALL BUSINESS ADMINISTRATION BELIEVE THAT THE 8(A) PROGRAM WAS DESIGNED TO PROVIDE THE OPPORTUNITY FOR BUSINESS ADVANCEMENT TO THE MAXIMUM PRACTICABLE NUMBER OF ENTREPRENEURS.

PUBLIC LAW 96-481, IN RECOGNITION OF LIMITED AGENCY RESOURCES AND LACK OF INCENTIVE FOR FIRMS TO EXIT THE PROGRAM, REQUIRED ALL 8(A) FIRMS TO BE SUBJECT TO A FIXED PERIOD OF PROGRAM PARTICIPATION, THUS TRANSFORMING THE OPEN-ENDED NATURE OF THE P.L. 95-507 PROGRAM INTO ONE WHICH IS AVAILABLE TO ELIGIBLE ENTREPRENEURS FOR A LIMITED PERIOD OF TIME.

MR. CHAIRMAN, LET ME RE-EMPHASIZE THE THREE CRITICALLY IMPORTANT ELEMENTS WHICH PROVIDE OUR PHILOSOPHICAL BASIS FOR IMPLEMENTATION OF THE 8(A) PROGRAM.

OPPORTUNITY FOR BUSINESS SUCCESS

FIRST, THE 8(A) PROGRAM IS DESIGNED TO PROVIDE AN OPPORTUNITY FOR ACCESS TO IMPORTANT BUSINESS DEVELOPMENT TOOLS WHICH INCLUDE SOLE SOURCE GOVERNMENT CONTRACTS, BUSINESS DEVELOPMENT EXPENSE, ADVANCE PAYMENTS, AND MANAGEMENT AND TECHNICAL ASSISTANCE. AS ONE 8(A) FIRM PRESIDENT RECENTLY DESCRIBED IT, 8(A) PROVIDES HIS FIRM WITH A "PASSPORT" INTO NEW MARKETS WHICH OTHERWISE WOULD BE CLOSED TO HIM. I BELIEVE IT IS THIS OPPORTUNITY THAT MOST SMALL MINORITY BUSINESS OPERATORS ARE LOOKING FOR. AND, MOST MINORITY ENTREPRENEURS DO NOT EXPECT THAT 8(A) PARTICIPATION PROVIDES GUARANTEED SUCCESS -- THEY RECOGNIZE THAT THE SUCCESS OR FAILURE OF THEIR ENTERPRISE RESTS SQUARELY ON THEIR SHOULDERS. WE CAN PROVIDE THEM WITH THESE IMPORTANT TOOLS BUT WE CANNOT BUILD THE BUSINESS FOR THEM.

MAXIMUM PRACTICABLE OPPORTUNITY

SECOND, OUR AIM IS TO PROVIDE THIS OPPORTUNITY TO THE BROADEST POSSIBLE NUMBER OF SMALL MINORITY BUSINESSES. NOT ONLY DOES THE LAW SPEAK TO "MAXIMUM PRACTICABLE OPPORTUNITY" BUT ALSO THE PRESIDENT, AS CHIEF EXECUTIVE OF THE LAW, HAS SPOKEN TO AFFORDING THE OPPORTUNITIES OF OUR PROGRAMS TO MORE PARTICIPANTS. IN HIS DECEMBER STATEMENT ON MINORITY BUSINESS THE PRESIDENT SET A GOAL OF DIRECTLY ASSISTING IN THE CREATION AND DEVELOPMENT OF 60,000 MINORITY BUSINESSES OVER THE NEXT TEN YEARS. THE 8(A) PROGRAM BENEFITS MUST, THEREFORE, BE MADE

AVAILABLE TO A GREATER NUMBER OF FIRMS. TOWARD THAT END I HAVE ALREADY ANNOUNCED AND COMMUNICATED IN NO UNCERTAIN TERMS TO ALL SBA'S DISTRICT DIRECTORS AND REGIONAL ADMINISTRATORS MY GOAL OF CERTIFYING 500 NEW FIRMS AS 8(A) BY APRIL 1, 1984.

MR. CHAIRMAN, VERY OFTEN, MY DUTIES REQUIRE MY PRESENCE IN MANY DIFFERENT PARTS OF THE COUNTRY - AND AS YOU ARE AWARE WHEN ONE LEAVES THE ATMOSPHERE OF WASHINGTON - ONE DOES ACQUIRE A DIFFERENT PERSPECTIVE. WHENEVER I AM ON THE ROAD, INDIVIDUAL MINORITY ENTREPRENEURS HAVE EXPRESSED TO ME THEIR INTEREST IN THE 8(A) PROGRAM AND THEIR FRUSTRATION IN THEIR ATTEMPTS TO BECOME CERTIFIED. MR. CHAIRMAN, I AM SURE YOU KNOW THAT MANY MEMBERS OF THIS BODY AS WELL AS MEMBERS OF THE GENERAL PUBLIC ARE RIGHTFULLY UPSET THAT ONLY A SMALL FRACTION OF MINORITY BUSINESS RECEIVE THE BENEFITS OF 8(A) PROGRAM PARTICIPATION.

THIS LEADS TO THE THIRD IMPORTANT ELEMENT OF THE 8(A) PROGRAM: THE OPPORTUNITIES IT PROVIDES CANNOT CONTINUE INDEFINITELY TO A RELATIVELY SMALL NUMBER OF FIRMS.

FIXED PERIOD OF PROGRAM PARTICIPATION

THE CONGRESS TOOK A COURAGEOUS AND IMPORTANT ACTION BY PASSING P.L. 96-481 IN OCTOBER 1980. THIS LAW REQUIRED SBA TO ESTABLISH A FIXED PERIOD OF PROGRAM PARTICIPATION FOR ALL 8(A) FIRMS. IT WAS THIS RECOGNITION THAT FIRMS SHOULD BE GIVEN AN OPPORTUNITY, BUT ONE THAT WAS NOT UNLIMITED, WHICH SETS THE STAGE FOR PROVIDING PROGRAM BENEFITS TO THE GREATEST NUMBER OF FIRMS.

FEDERAL PROCUREMENT DOLLARS ARE LIMITED AND THE COMPETITION FOR THOSE DOLLARS IS FIERCE. WE CANNOT EXPAND THE NUMBER OF PARTICIPANTS BEYOND OUR REASONABLE EXPECTATION OF PROVIDING THESE FIRMS WITH ADEQUATE SUPPORT. IT WOULD BE THE UNKINDEST AND CRUELEST ACTION TO HEIGHTEN EXPECTATIONS WITHOUT BEING ABLE TO DELIVER. THAT, MR. CHAIRMAN, IS WHY PROGRAM COMPLETION IS IMPORTANT. WITHOUT FIRMS LEAVING THE PROGRAM WE CANNOT EXPAND OUR EFFORTS TO A GREATER NUMBER OF FIRMS.

FPPT EXTENSIONS

WE BELIEVE THAT WE HAVE MADE MUCH PROGRESS SINCE P.L. 96-481 WAS ENACTED. WHEN FIXED PROGRAM PARTICIPATION TERMS (FPPTS) WERE ESTABLISHED, COMPREHENSIVE REVIEWS OF ALL 8(A) FIRMS WERE UNDERTAKEN AND ARE CONTINUING TO BE MADE. CONGRESS WISELY PROVIDED FOR AN FPPT EXTENSION WHICH ALLOWS US TO GRANT FIRMS AN ADDITIONAL PERIOD OF TIME IN THE PROGRAM BASED ON THEIR PROGRESS AND OTHER FACTORS. WE HAVE ONLY RECENTLY BEGUN PROCESSING REQUESTS FOR FPPT EXTENSIONS AND ARE CONVINCED ALREADY THAT THIS SECOND STAGE OF DETERMINING LENGTH OF TIME IN THE PROGRAM IS AS IMPORTANT AS THE FIRST STAGE - THE INITIAL ESTABLISHMENT OF THE FPPT.

FPPT - INCENTIVE TO MAXIMIZE 8(A) PROGRAM OPPORTUNITY

THE ESTABLISHMENT OF FIXED PROGRAM PARTICIPATION TERMS FOR INCOMING FIRMS IS AN INCENTIVE TO THE FIRMS TO MAKE THE MOST OF THE PROGRAM WHILE THEY CAN. FACED WITH A TIME CERTAIN FOR PROGRAM EXIT, ENTREPRENEURS WILL MAXIMIZE THEIR TIME IN THE PROGRAM, TAKE ADVANTAGE OF EVERY OPPORTUNITY AVAILABLE, AND WILL HAVE AN INCENTIVE TO OBTAIN THE EXPERTISE, EXPERIENCE, AND CONTACTS NECESSARY TO THE OPERATION OF A SUCCESSFUL BUSINESS.

PHILOSOPHICAL BASIS OF H.R. 863

MR. CHAIRMAN, WE ARE ALL AWARE OF THE ACTIVITY OF THIS SUBCOMMITTEE OVER THE PAST TWO YEARS REGARDING ISSUES CONTAINED IN THIS LEGISLATION. MANY HEARINGS HAVE BEEN HELD, BOTH HERE IN WASHINGTON AND THROUGHOUT THE COUNTRY AND AN EXTENSIVE REPORT WAS ISSUED BY THE FULL COMMITTEE. IT MUST BE ACKNOWLEDGED THAT OUR CONCEPTIONS OF HOW THIS PROGRAM SHOULD BE OPERATED ARE, IN SOME INSTANCES, DIAMETRICALLY OPPOSED EVEN THOUGH WE SHARE THE SAME GOAL OF ASSISTING MINORITY BUSINESSES.

COMPETITIVENESS OF THE SMALL BUSINESS CONCERN

YOUR COMMITTEE'S REPORT AND THE LEGISLATION AT ISSUE TODAY BOTH RECOMMEND A FRAMEWORK WHEREIN FIRMS WOULD BE ENTITLED TO PROGRAM BENEFITS UNTIL SUCH TIME AS THEY HAVE ACTUALLY ACHIEVED "TARGETS, OBJECTIVES AND GOALS DESIGNED TO RESULT IN THE COMPETITIVENESS OF THE SMALL BUSINESS CONCERN." THE UNDERLYING, BUT WE BELIEVE FAULTY, ASSUMPTION OF THIS BILL IS THAT P.L. 95-507 WAS INTENDED TO ENSURE COMPETITIVE VIABILITY OF PARTICIPATING MINORITY BUSINESSES. ON THE CONTRARY, THE LAW SPEAKS ONLY IN TERMS OF PROVIDING AN OPPORTUNITY, FOSTERING BUSINESS OWNERSHIP, AND PROMOTING, NOT ENSURING, COMPETITIVE VIABILITY.

SOME OF OUR DIFFERENCES CAN ALSO BE ASCRIBED TO THE PHILOSOPHY OF BUSINESS GROWTH AND THE LENGTH OF TIME NEEDED TO ACHIEVE SO-CALLED "MATURITY" IN THE AMERICAN ECONOMIC SYSTEM.

WE BELIEVE THAT A MAXIMUM PERIOD OF SEVEN YEARS IS A SUFFICIENT TIME PERIOD TO ALLOW SBA TO MEET THE PURPOSES OF THE ACT, I.E., TO PROMOTE COMPETITIVE VIABILITY WITH ALL THE TOOLS WE HAVE AT OUR DISPOSAL WHICH ARE NORMALLY AVAILABLE TO NEITHER MINORITY NOR MAJORITY FIRMS. YOUR REPORT SEEMS TO RELY UPON THE TESTIMONY OF A WHARTON SCHOOL OF FINANCE PROFESSOR, DR. JAMES WALTER WHO TESTIFIED BEFORE YOUR COMMITTEE. A CLOSE ANALYSIS OF DR. WALTER'S TESTIMONY HAS REVEALED THAT THE TWENTY YEAR PERIOD RELIED UPON BY THE COMMITTEE IS NOTHING MORE THAN A POSSIBLE MAXIMUM PERIOD OF BUSINESS GROWTH AND WAS NOT INTENDED BY THE WITNESS TO BE REPRESENTATIVE OF AN AVERAGE OR A NORM. IN ADDITION, THE HEARING RECORD INCLUDES A REFERENCE TO "SOME STUDIES WHICH WERE DONE AT THE REQUEST OF SBA, SUGGESTING THAT BEFORE A BUSINESS BECOMES REALLY VIABLE... THAT IT MIGHT TAKE AS MUCH AS TWENTY YEARS." I HAVE HAD SBA STAFF REVIEW THESE STUDIES AND NOTHING HAS BEEN FOUND IN THEM TO SUPPORT SUCH A CONCLUSION. I HAVE ATTACHED A COPY OF THIS REVIEW AT THE END OF MY STATEMENT.

H.R. 863 - LIMITS 8(A) PROGRAM BENEFITS

YOUR BILL WOULD HAVE THE NECESSARY EFFECT OF LIMITING PROGRAM BENEFITS TO A SELECT FEW BUSINESSES. SBA HAS FINITE RESOURCES - RESOURCES WHICH ARE ALREADY STRETCHED TO THE LIMIT BY THE CURRENT DEMANDS OF THE PROGRAM. THE PROPOSED LEGISLATION WOULD REQUIRE INTENSIVE ATTENTION DIRECTED AT A RELATIVELY SMALL NUMBER OF FIRMS FOR AN EXTENDED PERIOD OF TIME. WE BELIEVE, ON THE OTHER HAND, THAT OUR RESOURCES SHOULD BE CHANNELED INTO PROVIDING ASSISTANCE TO AS MANY DISADVANTAGED INDIVIDUALS AS WE POSSIBLY CAN. PARTICULARLY CONSIDERING THE NATURE OF THE INDEPENDENT ENTREPRENEUR WHO ULTIMATELY WILL CALL HIS OWN SHOTS, WE BELIEVE IT IS A FAR WISER USE OF RESOURCES TO PROVIDE A BOOST UPWARD TO A LARGER UNIVERSE OF FIRMS RATHER THAN HOLD THE HANDS OF A FEW.

SPECIFIC SECTIONS OF H.R. 863

TURNING NOW TO SPECIFIC SECTIONS OF H.R. 863, I MAKE THE FOLLOWING OBSERVATIONS:

REPEAL OF P.L. 96-481

UNDER THE PROPOSED LEGISLATION, P.L. 96-481 IS REPEALED. YOUR COMMITTEE AND THE SENATE SMALL BUSINESS COMMITTEE LABORED LONG AND HARD OVER THIS LAW. SINCE ITS ENACTMENT IN 1980, WE, TOO, HAVE COMMITTED A LARGE AMOUNT OF TIME AND EFFORT TO THE PROPER IMPLEMENTATION OF THE LAW AND THE REGULATIONS, AND OUR PROCEDURES. WE FEEL TO ABANDON THEM NOW, BEFORE THE RESULTS OF IMPLEMENTATION CAN BE ADEQUATELY OR FAIRLY JUDGED, WOULD BE A DISSERVICE TO US AND THE DISADVANTAGED BUSINESSES PARTICIPATING IN OUR PROGRAM.

PREDETERMINED CRITERIA OF COMPETITIVENESS

WE HAVE NO ARGUMENT WITH THE CONCEPT OF ESTABLISHING TARGETS, GOALS, AND OBJECTIVES AS REQUIRED BY P.L. 96-481 WHICH ARE RELATED TO OVERCOMING ECONOMIC DISADVANTAGE IN ORDER TO PROMOTE A FIRM'S COMPETITIVENESS. NOR DO WE DISAGREE WITH THE IDEA THAT FINANCIAL, MARKETING, AND MANAGEMENT ASPECTS OF THE BUSINESS MUST BE FOCAL POINTS FOR SBA'S ASSISTANCE.

WE DO, HOWEVER, QUESTION THE IDEA THAT THESE CRITERIA CAN BE SPECIFICALLY QUANTIFIED AND EXPRESSED NUMERICALLY AS THE BILL WOULD HAVE US DO. THE WORDS SUCCESS AND COMPETITIVENESS MEAN DIFFERENT THINGS TO DIFFERENT PEOPLE. THERE ARE VARYING DEGRESS OF SUCCESS AND

COMPETITIVENESS. FOR EXAMPLE, A FIRM WHICH HAS REACHED A FAIR LEVEL OF SALES IN DATA PROCESSING SERVICES AND WHICH IS PRODUCING A $50,000 ANNUAL INCOME FOR ITS OWNER MAY NOT DEEM ITSELF SUCCESSFUL OR VIABLE UNTIL SUCH TIME AS IT HAS DIVERSIFIED INTO A COMPLETE SYSTEMS INTEGRATION FACILITY AND IS PRODUCING IN EXCESS OF $100,000 ANNUAL INCOME FOR ITS OWNER.

IT IS LEGITIMATE, HOWEVER, FOR US TO RELY MORE HEAVILY UPON COMPARATIVE ECONOMIC FACTORS STUDIES THROUGH THE USE OF SUCH RESOURCES AS ROBERT MORRIS AND ASSOCIATES AND DUN AND BRADSTREET. WE ARE ALREADY RELYING ON THIS KIND OF DATA IN SOME REGIONS AND WILL BE EXPANDING THEIR USES IN THE FUTURE. THESE STUDIES ARE, HOWEVER, LIMITED BY THE NATURE OF THE DATA BASE AND THUS ARE OF PROSCRIBED VALUE.

SINCE "COMPETITIVENESS" AND "BUSINESS SUCCESS" ARE TERMS BOTH OF DEGREE AND IMPRECISE DEFINITION, OUR CONCERN IS THAT THE BILL COULD MEAN THAT 8(A) FIRMS WOULD NEVER HAVE TO LEAVE THE PROGRAM UNLESS VOLUNTARILY OR BY VIRTUE OF ADVERSE LEGAL PROCESS. THE BILL WOULD THUS PROVIDE FIRMS WITH A PERVERSE INCENTIVE -- TO LIMIT THEIR GROWTH AND DEVELOPMENT, OR TO CONTINUALLY AMEND THEIR BUSINESS GOALS, AND THEREBY REMAIN FOREVER ELIGIBLE FOR THE PREFERENTIAL TREATMENT AFFORDED BY THE 8(A) PROGRAM. MOST BUSINESS PEOPLE WOULD NATURALLY PREFER THE SHELTERED ENVIRONMENT OF 8(A) AND THE RELATIVELY EASY ACCESS TO SOLE SOURCE GOVERNMENT CONTRACTS TO THE ROUGH AND TUMBLE OF THE FREE MARKETPLACE. THE PERPETUAL PROGRAM PARTICIPATION WHICH IS MADE AVAILABLE IN THIS BILL IS CONTRARY TO OUR PERCEPTION OF THE

PROGRAM'S INTENT: TO FURNISH BOTH AN OPPORTUNITY AND AN INCENTIVE FOR THE DEVELOPMENT OF AS MANY FIRMS AS WE CAN REASONABLY ASSIST. A SECOND EFFECT OF PERPETUAL PROGRAM PARTICIPATION IS THAT THE PROGRAM'S BENEFITS WOULD BE EXTENDED ONLY TO A RELATIVELY FIXED GROUP OF FAVORED CONCERNS.

GRADUATION AND TERMINATION PROCEDURES

WE OBJECT TO THE BILL'S INCLUSION OF GRADUATION PROCEDURES UNDER THE ADMINISTRATIVE HEARING PROVISIONS OF SECTION 8(A)(9) OF THE SMALL BUSINESS ACT. SBA SHOULD NOT HAVE TO HOLD AN ADMINISTRATIVE HEARING, WHICH IS COSTLY AND TIME CONSUMING FOR ALL PARTIES, EVERY TIME A CONCERN WHICH HAS PARTICIPATED IN THE PROGRAM IS CAPABLE OF COMPETING WITHOUT THE BENEFITS OF THE PROGRAM. SUCH CONCERNS SHOULD PASS FROM THE PROGRAM AS A MATTER OF ADMINISTRATIVE ACTION, THEREBY GIVING OTHER WORTHY CONCERNS A CHANCE TO GAIN PROGRAM BENEFITS.

WE ALSO ARE CONFIDENT THAT UNDER THE TERMINATION AND GRADUATION CRITERIA CONTAINED IN THE BILL, FEW FIRMS WOULD EVER BE TERMINATED OR GRADUATED FROM THE PROGRAM. EVEN IF WE WERE TO SUBSCRIBE TO THE IDEA THAT CRITERIA OF COMPETITIVENESS CAN BE QUANTIFIED (AND WE DO NOT), THE BILL'S TERMINATION PROPOSAL REQUIRES AN INCREDIBLY HIGH THRESHOLD FOR INSTITUTION OF SUCH ACTION. IT PROPOSES THAT TERMINATION MAY OCCUR WHEN A FIRM HAS "DEMONSTRATED A SUSTAINED LACK OF PROGRESS OVER THE IMMEDIATELY PRECEDING THREE FISCAL YEAR PERIODS AS EVIDENCED BY THE FAILURE TO ACHIEVE AN AVERAGE OF CRITERIA TOTALING AT LEAST 10

PERCENTUM MORE THAN THE AVERAGE OF SUCH CRITERIA ACHIEVED IN THE IMMEDIATELY PRECEDING FISCAL YEAR." THIS PROVISION COULD BE INTERPRETED TO MEAN THAT ALL A FIRM NEED DO TO STAY IN THE PROGRAM IS TO INCREASE ITS PERFORMANCE BY AS LITTLE AS 10% EVERY THIRD FISCAL YEAR AND RETURN TO A MINIMUM 25% PERFORMANCE LEVEL IN THE TWO YEARS FOLLOWING. OR, IF A FIRM WERE GETTING CLOSE TO THE "GRADUATION" SCORES, THE CONCERN'S "CRITERIA OF COMPETITIVENESS" COULD BE AMENDED. THUS, IT WOULD BE POSSIBLE UNDER THIS BILL FOR A FIRM TO REMAIN IN THE 8(A) PROGRAM FOREVER.

SIZE STANDARDS

THE BILL WOULD PROHIBIT INCLUDING ANY PORTION OF RECEIPTS OR EMPLOYEES ATTRIBUTABLE TO 8(A) CONTRACTS IN DETERMINING THE SIZE OF A CONCERN. WE HAVE ALREADY GONE ON RECORD WITH OUR OPPOSITION TO THIS PROPOSAL AS IT AROSE IN CONTEXT WITH THE ISSUE OF THE 23 FIRMS FOUND "OTHER THAN SMALL."

WE BELIEVE THAT DESPITE THE ORIGIN OF A FIRM'S BUSINESS RECEIPTS, THE FACT REMAINS THAT 8(A) DOLLARS RECEIVED HAVE THE SAME QUALITIES AS NON-8(A) DOLLARS RECEIVED. THAT IS, ALL RECEIPTS, WHATEVER THEIR SOURCE, AID IN THE FIRM'S GROWTH AND DEVELOPMENT, AND A SIZE STANDARD WHICH EXCEPTS 8(A) RECEIPTS WOULD BE FALSELY MEASURING THE TRUE SIZE STATUS OF A COMPANY. GENERALLY, THE EXPERIENCE ATTAINED THROUGH THE PERFORMANCE OF 8(A) CONTRACTS IS MARKETABLE AND, THUS, THE 8(A) DOLLARS DO INDEED HAVE A PROPER AND FITTING ROLE IN ASCERTAINING SIZE.

UNDER EMPLOYEE SIZE STANDARDS, EXTREME ADMINISTRATIVE PROBLEMS WOULD ARISE IN ALLOCATING POSITIONS (FULL/PART-TIME, DIRECT/INDIRECT, OVERHEAD) TO 8(A) CONTRACTS. IN ADDITION, WE FEEL THAT, AGAIN THE PROPOSAL ASKS SBA TO INACCURATELY MEASURE A FIRM'S SIZE.

PERIOD OF NORMALITY

MR. CHAIRMAN, I BELIEVE WE HAVE GIVEN YOUR COMMITTEE SUFFICIENT SPECIFIC REASONS FOR OUR OPPOSITION TO THIS BILL. BUT PERHAPS THE MOST IMPORTANT REASON FOR OUR OPPOSITION IS OUR STRONG CONVICTION THAT WHAT THE 8(A) PROGRAM NEEDS IS A PERIOD OF NORMALITY. WE NEED TO HAVE TIME TO MAKE THE LEGISLATION WORK.

MR. CHAIRMAN, I BELIEVE WE HAVE DEALT SUCCESSFULLY WITH MANY OF THE MAJOR PROBLEMS WITH WHICH THIS PROGRAM WAS CONFRONTED. NO LONGER DOES THE PROGRAM SUFFER FROM WIDESPREAD INFILTRATION OF "FRONT" COMPANIES, SCANDALOUS ABUSE OF ADVANCE PAYMENTS AND BUSINESS DEVELOPMENT EXPENSE, AND ILL-DEFINED GOALS AND PURPOSES. WE HAVE BEEN ABLE TO EXECUTE AND ADMINISTER AN ASTONISHING $8 BILLION PLUS IN GOVERNMENT CONTRACTS SINCE THE PROGRAM BEGAN, OVER HALF OF WHICH HAS OCCURRED IN THE LAST FOUR FISCAL YEARS. WE NOW HAVE AN OPPORTUNITY TO TURN OUR ATTENTION TO DEVELOP AND REFINE OUR STANDARDS, GOALS, AND PROCEDURES, IMPROVE OUR MANAGEMENT, PROVIDE FOR EQUITABLE TREATMENT OF ALL FIRMS, AND EXPAND PROGRAM PARTICIPATION. IN ORDER TO CONTINUE OUR EFFORTS IN THESE AREAS, WE NEED NORMALITY.

AND, MR. CHAIRMAN, WE ARE MAKING PROGRESS IN MANY IMPORTANT AREAS. WE HAVE RECENTLY ISSUED INSTRUCTIONS TO THE FIELD TO EXPEDITE APPLICATION PROCESSING PROCEDURES. FROM NOW ON, WE PROJECT THAT THE AVERAGE LENGTH OF TIME TO PROCESS AN APPLICATION WILL BE REDUCED TO A PERIOD OF 70 DAYS AS OPPOSED TO THE UPWARDS OF SIX MONTHS THAT THE PROCEDURES CURRENTLY CONSUME.

AS I MENTIONED BEFORE, I HAVE ESTABLISHED A GOAL OF 500 NEW ENTRANTS TO BE ADDED TO THE PROGRAM BY APRIL OF 1984. I AM VERY SERIOUS ABOUT EXPANDING PROGRAM BENEFITS TO A WIDER ARRAY OF DISADVANTAGED ENTREPRENEURS AND HAVE COMMUNICATED MY COMMITMENT TO THIS GOAL TO THOSE PERSONS AT ALL LEVELS OF THE AGENCY RESPONSIBLE FOR INSURING THAT WE MEET THIS GOAL.

THIS GOAL, INCIDENTLY, WOULD NOT BE POSSIBLE UNDER YOUR PROPOSED STATUTORY PLAN, MR. CHAIRMAN. WHILE WE MIGHT BE ASSISTING A FEW FIRMS TO A GREAT EXTENT UNDER YOUR PROPOSAL, IT IS UNACCEPTABLE TO US TO DENY PROGRAM ENTRY TO A SUBSTANTIAL NUMBER OF MINORITIES WHO LIVE IN YOUR DISTRICT AS WELL AS THE DISTRICTS OF ALL WHO ARE PRESENT HERE TODAY.

AN IMPORTANT INTER AGENCY AGREEMENT WAS EXECUTED LAST YEAR WITH THE DEPARTMENT OF COMMERCE WHICH IS WORKING. THE AGREEMENT REQUIRES MBDA FUNDED MINORITY BUSINESS DEVELOPMENT CENTERS (MBDCS) TO ASSIST MINORITY FIRMS IN PREPARING APPLICATIONS FOR 8(A) PROGRAM PARTICIPATION. MANY OF THESE MBDC'S ARE PUTTING TOGETHER QUALITY PACKAGES FOR 8(A) APPLICANTS AND, IN DOING SO, ARE EXPEDITING THE PROCEDURES FOR SBA AND SAVING TIME FOR APPLICANTS.

IN ADDITION, THE AGREEMENT PROVIDES FOR A MAJOR INTERAGENCY COORDINATED EFFORT TO ASSIST 8(A) FIRMS AS THEY TRANSITION OUT OF THE PROGRAM. WE STRONGLY BELIEVE THAT WE MUST PROTECT AND FOSTER THE SIZEABLE INVESTMENT WE HAVE MADE IN MANY OF THESE FIRMS AND HAVE ENTERED INTO A PARTNERSHIP WITH THE COMMERCE DEPARTMENT TO ENSURE THAT SECTION 8(A) FIRMS ARE EASED INTO THE FREE MARKETPLACE. SBA WILL BE PROVIDING 8(A) FIRM PROFILES TO MBDA AT LEAST ONE YEAR PRIOR TO THEIR PROGRAM EXIT. MBDA PERSONNEL AND MBDC'S WILL WORK TOGETHER WITH SBA PERSONNEL TO ASSURE CONTINUITY OF THE VARIOUS TYPES OF ASSISTANCE NECESSARY TO PROMOTING THE FIRM'S SUCCESS.

MR. CHAIRMAN, WE HAVE NO LESS THAN THE SUPPORT AND LEADERSHIP OF THE PRESIDENT OF THE UNITED STATES NOT ONLY WITH REGARD TO THE NEED TO SUPPORT TRANSITIONING FIRMS BUT ALSO IN THE PROCUREMENT AREA. FOR THE FIRST TIME IN THE HISTORY OF THE FEDERAL MINORITY BUSINESS EFFORT IN THIS COUNTRY, OVERSIGHT RESPONSIBILITY FOR ENSURING THAT PROCUREMENT GOALS ARE MET WILL REST WITH A CABINET COUNCIL. PROCUREMENT GOALS HAVE BEEN RAISED SIGNIFICANTLY AND THE PRESIDENT HAS CALLED UPON ALL PROCURING AGENCIES TO MEET THESE GOALS.

MR. CHAIRMAN, WE KNOW THAT YOU AND YOUR COMMITTEE SHARE OUR INTEREST IN THIS PROGRAM AND ITS FUTURE. OUR JOINT ROLES ARE TO ENSURE THAT GOVERNMENT FOSTERS AN ENVIRONMENT FOR DISADVANTAGED ENTREPRENEURS WHICH WILL RESULT IN THEIR ENHANCED BUSINESS CAPABILITIES. WE MUST PROVIDE THAT OPPORTUNITY FOR A SIGNIFICANT NUMBER OF MINORITY INDIVIDUALS IF THE DISADVANTAGED POPULATION IS TO OBTAIN SOCIAL AND ECONOMIC EQUALITY. THE SECTION 8(A) PROGRAM IS NOW DESIGNED TO BRING THAT OPPORTUNITY TO MORE AND MORE INDIVIDUALS. WE BELIEVE WE ARE ON THE RIGHT TRACK WITH THAT PHILOSOPHY.

MR. CHAIRMAN, THE STATISTICAL INFORMATION YOU REQUESTED WE PROVIDE IS ENCLOSED WITH THIS STATEMENT.

AGAIN, LET ME THANK YOU FOR INVITING ME TO TESTIFY BEFORE YOUR COMMITTEE.

APPENDIX

The Issue of 20 Year Firm Development

SUMMARY

Included in the House Small Business Committee report entitled "Minority Business Development Efforts of the Small Business Administration" are certain assumptions about the evolution of business firms. Simply stated, it is argued that approximately 20 years are required for a typical firm to "develop" from its "birth" until it reaches "maturity." At various times in other forums this argument has been used to recommend a maximum term in the 8(a) program of ten to twenty years.

Our comments are as follows:

- The testimony cited as evidence does not support the argument.
- No studies can be found in the literature to support the contention.
- Recent evidence indicates that the life cycle hypothesis itself is not a good explanation of the evolution of firms.

DISCUSSION

The Hearing Record

The Report states, at page 16, that

> Dr. James Walter, Wharton School of Finance, University of Pennsylvania, responded to questions regarding stages of business growth and their relationship to the establishment of program completion dates and criteria. Dr. Walter stated that a firm goes through a loss phase of roughly 10 years, followed by an emerging profit phase of equal duration, for a total of approximately 20 years required to reach maturity.

The testimony upon which this statement is apparently based is found in the Hearings on page 171:

> Mr. Mitchell... you have some studies which were done at the request of SBA, suggesting that before a business really becomes viable, capable of full competition in the system, that it might take as much as 20 years.
> I have two questions to you. How applicable are these proposals to the growth cycle of a business as recognized by other experts-let's say the 3- to - 5-year period? Would your proposals be as applicable there as they would be to a 15- to 20-year period?

Mr. Walter. Our proposals actually split the difference. What we said is the firm could remain in the loss phase for these purposes for a period of roughly 10 years. The same kind of duration might apply to the emerging profit status. What we feel is that --

Mr. Mitchell. So you come down with really almost a 20-year period, too, don't you?

Mr. Walter. Yes, but I think the real issue is whether the small business is making progress...

Mr. Mitchell....I want to make sure I am straight. Your maximum period would be a loss phase of 10 years, give or take a couple of years, and the emerging phase, another 10 years.

Mr. Walter. Those are the maximum. In essence, you need to allow time. There is absolutely no question about it. The real problem in all of these is to differentiate between the firm that is going nowhere and the firm that has something to offer to the economy.

We do not believe this record shows Dr. Walters saying it takes a firm twenty years to reach maturity, as stated in the Report. The most that can be made of Dr. Walters' testimony is that 20 years might be the maximum but not the average.

The Literature

Nor do we agree with Chairman Mitchell's reference to "some studies which were done at the request of SBA, suggesting that before a business really becomes viable, capable of full competition in the system, that it might take as much as 20 years." A review of the record does not support such a conclusion.

Three pieces of research have been offered as the basis for recommending a maximum term in the 8(a) program of between ten and twenty years. The three studies are: "The Report of the SBA Task Force on Venture and Equity Capital for Small Business;" ("The Casey Report"), January 1977; "Tax Incentives for Small Business," James Walter, Hans Stoll, Wharton School, 1980; and "Small Business Financing: The Current Environment and Suggestions for Improvement," National Association of Security Dealers, Inc., 1979. Each of the studies uses the four-stage "life-cycle model" of business development which appeared originally in the Casey Report.* Because of the importance and frequency of the argument, it is necessary to examine this justification closely.

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*Nathan T. Garrett uses a five stage model of business growth in this "Management Planning and Business Growth." In "Financial Planning, Business Growth and Minority Enterprise," William C. Hunter offers a three stage life cycle of a hypothetical traditional small minority firm. Both essays appear in Minority-Business: The Second Stage of Growth, Whittaker, Gerald F., Selected Proceedings of the Seventh Annual Symposium on the State of Black Economy, 1977.

1976, the Administrator of the SBA convened a task force to examine impediments preventing small businesses from attracting capital, and to recommend ways of overcoming those impediments. The task force was chaired by William J. Casey, then, counsel to Rogers and Wells, the prestigious New York law firm. Other members of the task force included: William R. Hambrecht, Partner, Hambrecht and Quist; Robert P. Aulston, III, Chairman, Gulf South Venture Corporation; Stanley Golder, President, First Capital Corporation of Chicago; and Patrick R. Lyles, Professor, Harvard Business School.

The task force focused its efforts on the financial problems of new, high-technology firms which had a great potential for growth and profitability. These firms constitute a very small segment of the universe of America's small businesses, and are vastly different from the target population of 8(a) eligible firms. To provide a framework for their findings and recommendations, the task force constructed, based on its collective experience and wisdom, a hypothetical "life-cycle of the new enterprise." It is this life-cycle model that has been used in all the studies cited above.

In a July 7, 1981, letter to the SBA Professor Lyles stated, "...the chart was in no way intended to represent the results of a study by the Task Force or a summary of studies done by others. The chart was only intended to give a very generalized notion of a new enterprise life cycle."

Professor Lyles went on to say "...I stongly disagree with the implications of the time base indicated on the (Casey Report) chart for the lengths of each phase. In particular, the possible cumulative time to break even of eleven years would be a situation completely outside the realm of an independent business unless it were the intention of the entrepeneur to pursue the situation for noneconomic reasons. Except for a few capital equipment intensive ventures, such as cable television, or an extended start-up period for a franchise with dozens of new openings annually, most start-ups should break even well within three years. For the breakeven to extend beyond three years usually means serious, if not fatal, trouble with markets, management or both."

To indicate the narrow applicability of the Casey Report illustration, consider that it takes between four and eleven years for their "new enterprise" to reach a positive operating profits, and nine to twenty years for its cumulative profits to become positive. Also, their hypothetical firm reaches a revenue level of $10 million between its fourth and eleventh year of existence, and $40 million at maturity.

These estimates are not a helpful description of either the development path of small business in general, or the 8(a) client

population in particular. For example, based on 1977 Enterprise Statistics cited in Table 1, 99.5 percent of the companies in the United States have less than $10 million in sales. The average company sales in the United States, in 1977, was less than $500,000 a year; the average construction firm's sales were about $200,000 a year, the averaging manufacturing firm had annual sales of less than $5 million per year. The same data source shows that amongst computer and data process firms, average sales were about a half million dollars per year.

Table 1 also displays the average dollar sales for minority-owned firms in several sectors of the economy. These data support our contention that the hypothetical growth path developed for the Casey report is patently irrelevant to the 8(a) target population.

Another reason for rejecting the implications of the hypothetical is to be found in the nature of policy issues addressed in the Casey Report, the NASD Study, and the Walter-Stoll Study. The NASD study states, "...NASD organized a committee of securities industries experts to address the capital-raising problems of small business. The Walter-Stoll study states, "This report is aimed at the effect of Federal taxation on small business." The Report of the Task Force on Venture and Equity Capital for Small Business was created "to access the financing problems of the small businessman today and to recommend solutions." The studies are simply not relevant to our problem of designing an effective use for the 8(a) program tools.

Summarily, The Casey Report, in all its manifestations, can be rejected as a source of 8(a) policy guidance. It was designed for other purposes, it is applicable to other problems, and it is irrelevant to our task.

A final reason for rejecting any recommendations based on the Casey life-cycle model is to be found in a path-breaking piece of research recently completed by David Birch and Susan MacCracken titled, "Corporate Evolution: A Micro-Based Analysis." This research was completed under an SBA grant in January 1981. It examines the pattern of changes in sales and employment of 5.6 million firms between 1969 and 1976. The firms are classified by their size, age, industry, location, and corporate affiliations. Birch and MacCracken studied the usefulness of the traditional four-stage life cycle growth path of American business. After conducting several tests, they conclude, "There is not a great deal of support for a strong life cycle model of corporate evolution." In other words, the biological analogy of firms being born, growing, maturing, and dying, is not a typical pattern. Birch and MacCracken found considerable evidence to support a different model of business evolution.

In conclusion, we have been unable to find support anywhere in the literature for the claim that it takes twenty years for a firm to mature.

Background material requested by Chairman Mitchell

1. Number of 8(a) Firms.

   As of February 28, 1983, there were 2129 firms in the 8(a) company portfolio.

   SOURCE: SBA Computer Report CCAM 35-15A, dated 2/28/83.

2. Distribution of 8(a) firms by major SIC categories.

SIC Category		# 8(a) firms
000		3
008		1 (00 = 4)
045		1 (04 = 1)
072		1
073		2
078		36 (07 = 39)
083		1
085	0 = 62 (2.9%)	17 (08 = 18)
117		1 (11 = 1)
121		1 (12 = 1)
150		1
151		12
152		87
154		250
155		1
158		1 (15= = 352)
161		51
162		54 (16 = 105)
171		63
172		75
173		68
174		13
175		13
176		24
177		9
178		1
179		38 (17 = 304)
196	1 = 764 (35.9%)	1 (19 = 1)
201		8
205		1
209		1 (20 = 10)
225		2
226		1
229		1 (22 = 4)
231		3
232		11
233		2
238		1
239		9 (23 = 26)
243		1

243		1
244		5 (24= 6)
251		1
252		1
254		2
259		1 (25 = 5)
262		1
264		6
265		5 (26 = 12)
274		3
275		3
276		2 (27 = 8)
282		1
283		4
284		7
285		12 (28 = 24)
295	2 = 96 (4.5%)	1 (29 = 1)
302		1
306		2
307		9 (30 = 12)
319		1 (31 = 1)
327		2
329		1 (32 = 3)
335		2
336		1
339		2 (33 = 5)
340		1
342		1
344		17
345		3
346		4
347		1
348		2
349		5 (34 = 34)
352		1
353		3
354		1
357		2
358		1
359		30 (35 = 38)
361		2
362		3
366		17
367		17
369		3 (36 = 42)
371		1
372		9
373		1
376		1 (37 = 12)

381		1
382		9
383		2
384		1
385		2
386		2 (38 = 17)
393		1
395		1
399	3 = 170 (8.0%)	4 (39 = 6)
411		1 (41 = 1)
421		32 (42 = 32)
441		1
445		1
446		2 (44 = 4)
451		2
458		2 (45 = 4)
471		1
472		2 (47 = 3)
495	4 = 53 (2.5%)	9 (49 = 9
505		5
506		2
508		3 (50 = 10)
511		2
512		2
514		7
516		1
517		8
519		4 (51 = 24)
525		1 (52 = 1)
533		1 (53 = 1)
551		1
553		1
554		1 (55 = 3)
581		16 (58 = 16)
594		8
596		3
598		17
599	5 = 89 (4.2%)	6 (59 = 34)
641		1 (64 = 1)
651		1
653	6 = 3 (.1%)	1 (65 = 2)
721		20
724		6
725		4
726		1
729		1 (72 = 32)
731		5
733		12
734		209

736		11
737		83
738		3
739		321 (73 = 644)
753		7
754		1 (75 = 8)
762		7
763		1
769		8 (76 = 16)
781	7 = 717 (33.7%)	17 (78 = 17)
804		3
807		2
809		2 (80 = 7)
811		1 (81 = 1)
829		1 (82 = 1)
833		1
835		2 (83 = 3)
859		1 (85 = 1)
871		1
879		1 (87 = 2)
891		106
893		41
898		1
899	8 = 175 (8.2%)	12 (89 = 160)

SOURCE: SBA Computer Output entitled "8(a) Portfolio Sorted by SIC Code", dated March 18, 1983.

3. Distribution of firms by SBA region.

Region	# 8(a) Firms
I (Boston)	96
II (New York)	162
III (Philadelphia)	573
IV (Atlanta)	184
V (Chicago)	220
VI (Dallas)	238
VII (Kansas City)	73
VIII (Denver)	126
IX (San Francisco)	308
X (Seattle)	149

SOURCE: SBA Computer Report CCAM 35-15A, dated 2/28/83.

4. Total 8(a) Contracting levels for the History of the Program.

Region	Business Class	# Contracts	Net Dollar Amount (in Millions)
I	Manufacturing	123	44,390.7
	Construction	876	108,610.1
	Non-Professional Services	714	418,463.2
	Professional Services	520	125,044.4
	TOTAL	2233	696,508.4
II	Manufacturing	423	718,359.0
	Construction	1113	162,133.5
	Non-Professional Services	888	253,197.6
	Professional Services	528	70,353.5
	TOTAL	2952	1,204,043.7
III	Manufacturing	441	155,759.8
	Construction	2830	395,518.7
	Non-Professional Services	1914	720,211.7
	Professional Services	5562	1,464,768.5
	TOTAL	10747	2,736,258.7
IV	Manufacturing	267	147,544.0
	Construction	1587	216,780.7
	Non-Professional Services	1237	524,025.8
	Professional Services	269	70,408.5
	TOTAL	3360	958,759.0
V	Manufacturing	520	347,635.3
	Construction	2129	427,484.5
	Non-Professional Services	944	185,432.4
	Professional Services	295	62,852.8
	TOTAL	3888	1,023,405.0
VI	Manufacturing	697	169,873.5
	Construction	1564	197,518.6
	Non-Professional Services	1479	292,535.5
	Professional Services	183	21,462.9
	TOTAL	3923	681,390.6
VII	Manufacturing	98	12,160.6
	Construction	645	103,732.9
	Non-Professional	531	159,270.2
	Professional	134	28,360.6
	TOTAL	1408	303,524.4

VIII	Manufacturing	115	242,840.3
	Construction	726	190,888.2
	Non-Professional Services	408	49,439.6
	Professional Services	292	35,884.1
	TOTAL	1541	519,052.2
IX	Manufacturing	680	316,486.7
	Construction	1945	292,071.0
	Non-Professional Services	1359	594,457.1
	Professional Services	803	466,731.7
	TOTAL	4787	1,669,746.6
X	Manufacturing	69	7,819.1
	Construction	1386	229,455.8
	Non-Professional Services	1009	157,681.1
	Professional Services	156	35,776.5
	TOTAL	2620	430,732.6
ALL	Manufacturing	3433	2,162,869.2
	Construction	14801	2,324,194.1
	Non-Professional Services	10483	3,354,714.3
	Professional Services	8742	2,381,643.6
	TOTAL	37459	10,223,421.1

SOURCE: SBA Computer Report 8(a)-1510, dated 2/28/83.

5. Average 8(a) to non-8(a) sales ratio for the entire portfolio.

Based on the most recent financial statements of the 2130 firms in the 8(a) portfolio on March 30, 1983, total 8(a) sales were $1,146,691,100.71, and total non-8(a) sales were $1,450,783,907.56, for an 8(a) to non-8(a) sales ratio of .79 to 1.

SOURCE: Extracted from 8(a) Financial Information System Data Base on 3/30/83, using Query Language Process, by SBA Office of Computer Sciences personnel.

NOTE: This ratio, within the parameters of FY 81 and FY 82, has been requested from SBA field offices. This task requires manual compilation, and completion of the task is not expected by 4/15/83.

6. Number of 8(a) firms which would be classified as other than small if the proposed size standard regulations should be made effective without change.

No analysis of this has been performed.

7. 8(a) Contract awards as a percent of total direct government purchases from minority businesses over the last 5 year period.

	Total Gov't Contracting With Minority Small Businesses	8(a) Contract Awards	8(a) %
FY 82	$4.408 billion	$1.888 billion	42.8
FY 81	$4.090 billion	$1.737 billion	42.5
FY 80	$3.015 billion	$1.309 billion	43.4

SOURCE: As reported to SBA by procuring Agencies pursuant to Section 221(h) of Public Law 95-507.

	Total Minority Procurement	8(a) Procurement	8(a) %
FY 79	$2.484 billion	$1.018 billion	41.0
FY 78	$1.813 billion	$ .743 billion	41.0

SOURCE: MBDA Form 91.

NOTE: This information is only available for the last 3 years from SBA's data base due to the fact that the procuring Agencies did not begin to comply with the requirements of Section 221(h) of Public Law 95-507 (10/24/78) until FY 80. Therefore, we must rely on MBDA data for years previous to FY 80.

8. Distribution of 8(a) portfolio by ethnic identification of the business owner (s).

Region I

Black	73
Puerto Rican	5
American Indian	5
Spanish Speaking	6
Asian	6
Eskimo/Aluet	0
Undertermined	0
Other	1

Region II

Black	90
Puerto Rican	34
American Indian	3
Spanish Speaking	17
Asian	10
Eskimo/Aluet	0
Undetermined	0
Other	8

Region III

Black	445
Puerto Rican	0
American Indian	9
Spanish Speaking	56
Asian	47
Eskimo/Aluet	0
Undetermined	2
Other	14

Region IV

Black	155
Puerto Rican	2
American Indian	10
Spanish Speaking	5
Asian	8
Eskimo/Aluet	0
Undetermined	0
Other	4

Region V

Black	166
Puerto Rican	1
American Indian	6
Spanish Speaking	29
Asian	12
Eskimo/Aluet	0
Undetermined	0
Other	6

Region VI

Black	90
Puerto Rican	0
American Indian	19
Spanish Speaking	124
Asian	2
Eskimo/Aluet	0
Undetermined	0
Other	3

Region VII

Black	58
Puerto Rican	0
American Indian	3
Spanish Speaking	12
Asian	0
Eskimo/Aluet	0
Undetermined	0
Other	0

Region VIII

Black	28
Puerto Rican	0
American Indian	19
Spanish Speaking	60
Asian	16
Eskimo/Aluet	0
Undetermined	0
Other	3

Region IX

Black	130
Puerto Rican	0
American Indian	12
Spanish Speaking	100
Asian	62
Eskimo/Aluet	0
Undetermined	0
Other	4

Region X

Black	64
Puerto Rican	0
American Indian	31
Spanish Speaking	31
Asian	15
Eskimo/Aluet	4
Undetermined	2
Other	2

ALL

Black	1299 (61.0%)
Puerto Rican	42 (2.0%)
American Indian	117 (5.5%)
Spanish Speaking	440 (20.7%)
Asian	178 (8.4%)
Eskimo/Aluet	4 (0.2%)
Undetermined	4 (0.2%)
Other	45 (2.1%)

SOURCE: SBA Computer Report CCAM 35-15A, dated 2/28/83.

9. Number of hearings held pursuant to Section 8(a)(9) of the Small Business Act.

11.

SOURCE: SBA's Office of General Counsel, Office of Litigation.

10. Number of firms which will exit the 8(a) Program by their FPPT dates.

— Calendar Years —

Region	83	84	85	86	87
I	17	6	22	34	0
II	32	17	41	38	7
III	59	42	108	147	73
IV	26	23	46	50	3
V	28	24	51	53	25
VI	34	27	70	63	4
VII	12	13	19	19	8
VIII	11	6	27	44	14
IX	57	36	78	64	26
X	22	23	31	49	12
All	298	217	493	561	172
	(15.6%)	(11.4%)	(25.9%)	(29.4%)	(9.0%)

NOTE: The total number of firms with identifiable FPPT dates is 1741. Some 224 firms which failed to negotiate FPPT terms have not yet been sent final termination letters, and therefore are still to be removed from this computer listing of the portfolio (report CCAM 35-15A). Further, 164 firms' FPPT dates are dependent upon award of their first 8(a) contract, and therefore do not yet have a specific FPPT date.

SOURCE: SBA Computer Report CCAM 35-15A, dated 2/28/83.

Mr. MITCHELL. Thank you. I knew what your position was, because we have heard previous testimony from you on this issue. But I would like to make one or two observations. You talked about the lack of resources, and that is a perennial and extensive problem in Government.

But with reference to the minority small business component of the Small Business Administration, it has suffered a personnel loss. From 1981 to 1982, it was reduced down to 361 people. Then for the fiscal year 1983 to 1984, there was another reduction in personnel in that area, down by 46 people. All together, you have had about 126 permanent employment positions eliminated.

But it is very, very strange that, given the lack of resources in the MSB area you are so concerned about, of that 126 person reduction, that 37 percent of that came out of the minority small business program area. That is just one observation that I wanted to make.

The second observation that I wanted to make was with reference to your desire, your thrust to give more firms access to the 8(a) program. I would point out to you, as I did yesterday, that in terms of financial grants, loans, and guarantees by Federal agencies for the minority businesses, the amount dropped from almost $3 billion in 1981 to $1.1 billion in 1982.

Mr. SANDERS. Would you repeat those figures?

Mr. MITCHELL. Yes. In 1981, financial grants, loans, and guarantees by federal agencies to minority firms were $2.8 billion. It dropped down to $1.1 billion in 1982. In addition to that, if you look at the number of SBA minority business loans made, and compare 1981 and 1982, there were 5,240 such loans made in 1981 and that number was cut in half in 1982, down to 2,521.

Obviously, part of that reduction was caused by the recession. But I would insist that most of the reduction occurred because SBA imposed more stringent credit standards, removed all loan making goals from its district offices. It removed loan making numbers from the performance standards of its loan processing personnel. SBA during that time simply stopped all efforts to market and sell the guarantee program. I know that you have resumed that effort but during the year it simply stopped. Certainly the fact that some SBA district offices were giving out false information, as you know, with regard to the availability of direct loan funds, I think that a combination of all these factors, plus the vicissitudes of the economy moved us backward instead of forward.

Lastly, I will insist again, again, and again that for as long as SBA continues not to accept the contracts offered by the various agencies of Government to the maximum level, you are not going to facilitate new 8(a) program entries. I refer specifically to the $1 billion that was offered by DOD, that was not utilized by the Small Business Administration.

You have a goal; you have a thrust. I think that you are trying to be fair. But, I have to look objectively at whatever data is available to me, sense the accuracy of it, and then evaluate the performance of the SBA based on that data.

Mr. SANDERS. Well, Mr. Chairman, in answer to some of those statements, this $2.8 billion versus $1.1 billion, where in the 8(a) program are those figures?

Mr. MITCHELL. They are not in it at all.

Mr. SANDERS. What are you talking about, grants?

Mr. MITCHELL. Grants, loans, and guarantees.

Mr. SANDERS. What does that have to do with the SBA?

Mr. MITCHELL. I am going to answer you.

Mr. SANDERS. All right.

Mr. MITCHELL. SBA should be the advocate. That is one of the roles that you ought to play, reaching out to these agencies to always enhance the opportunities for small and minority business.

Mr. SANDERS. I agree with that.

Mr. MITCHELL. Apparently that has not been done effectively.

Mr. SANDERS. No, I think that we are doing that, but I must say that I thought that we came here to talk about the programs over which we had control. I would be delighted to talk about our advocacy.

Mr. MITCHELL. If you do not have control over advocacy, then God help us. In addition, the statistics I gave you include year loan programs.

Mr. SANDERS. As far as the loans are concerned, of course, the percentage of minority loans held within eight-tenths of a point from 1 year to the next. Loans were down all over; that is true. But it was 12.9 percent in 1981, and 12.1 percent in 1982.

We regret the eight-tenths of a percent in there, but we are trying to address that kind of a problem. As far as returning a billion dollars worth of procurement, you know that often times we turn back a procurement offer in the best interests of the minority firm in the 8(a) program.

When that price is too low, and when the conditions are unfair, when it is something that cannot be performed, certainly we turn it back. We get sandbagged by some of the agencies in this procedure.

Mr. MITCHELL. Let me just interrupt you for a moment on that point. That also is part of your advocacy role. You should be working with those offerings to make sure that they are good and fair offerings for 8(a) firms. Negotiating with those various agencies is SBA's responsibility.

Mr. SANDERS. Absolutely. That is part of our problem. We constantly work with those kinds of projects, but we are not going to load a contract on a minority firm that is obviously unfair by its terms.

Mr. MITCHELL. I think that that would be manifestly unfair on your part.

Mr. SANDERS. Absolutely.

Mr. MITCHELL. I also think that it is manifestly unfair if you look at that offer, see weaknesses in it, and fail to go back to that agency to try to make some adjustments.

Mr. SANDERS. I would agree with that.

Mr. MITCHELL. Rather than just blithely dismissing it.

Mr. SANDERS. I do not think that we do do that as a rule. Whenever you can show me a case of that, I will certainly follow up. We do not have perfect people in any of our programs. We do try to uncover those that are failing to perform.

The personnel cutback in the minority program was largely in the central office. We are trying to get more attention in the field to deliver more effectively.

Mr. MITCHELL. I know that the other members have to go. I am sorry, I guess that I should have let you speak first. I apologize for that.

Mr. MCDADE. Would you yield?

Mr. MITCHELL. No, I will give up my time.

Mr. MCDADE. I just have a couple of questions that I want to ask. I am late now, but I have 800 people threatened with loss of employment in my district, so I have a real problem that I have to work on. But I would like very much as somebody who cosponsored and was floor manager on my side with Congressman Addabbo when we passed this bill. We renewed it and reauthorized it in 1980, and I am interested in this progress as I think all of us are. I want to ask you some questions.

In your opinion, do the criteria for competitiveness in H.R. 863 provide adequate safeguards against unlimited participation in the 8(a) program?

Mr. SANDERS. No.

Mr. MCDADE. Will you elaborate?

Mr. SANDERS. Well, we feel that every aspect of this, and I can submit a rather detailed analysis of what we consider to be the major aspects, but first of all——

Mr. MCDADE. Let me ask you this. Would you submit that to us for the record, and make it available to the committee, so that we can have an opportunity to look at it in some detail?

Mr. SANDERS. Yes. We think that it can be used to perpetuate program participation indefinitely. The numbers and the formulas in there, plus just the overriding philosophy, Congressman McDade, is that we do not believe that you can manage through statute with objective formulas, a program that always will have some subjectivity in its analysis.

Under H.R. 863, a firm would leave the program only if (1) it were terminated based on good cause, (2) it failed to meet an average of at least 25 percent of its criteria of competitiveness in any given fiscal year, (3) "has demonstrated a sustained lack of progress over the immediately preceding three fiscal year periods as evidenced by the failure to achieve an average of criteria totaling at least 10 per centum more than the average of such criteria achieved in the immediately preceding fiscal year," or (4) were graduated as a result of achieving criteria of competitive scores of at least 85 percent on all criteria of competitiveness and at least 75 percent on financial, management, and marketing criteria.

Criteria 2 and 3 interact in an important way. Under them, all that a firm need to do to stay in the program is to increase its performance by as little as 10 percent every third fiscal year and return to a minimum 25 percent performance level in the 2 succeeding years, as shown in the following table:

Year:	*Score*
1	25
2	25
3	28
4	25
5	25
6	28

NOTE.—A score of 28 is 10 percent more than a score of 25.

Alternately, if a firm were getting close to the graduation scores of 85 and 75, the concern's criteria of competitiveness could be amended. The bill calls for them to be reviewed annually and adjusted as appropriate.

Thus it would be possible under this bill for a firm to remain in the 8(a) program forever.

Mr. McDADE. I understand and appreciate some of the difficulties. Please give that to us, and give us a chance to look at it. Let me address this question.

That is what you anticipate in terms of FPTT extensions. I want to know, Mr. Administrator, are you prepared to take a close look at each and every firm that is requesting an extension to determine their needs on an individual basis?

Mr. SANDERS. Absolutely. Congressman, I am glad you brought that up because I think that this is something that has been overlooked in all of the testimony that I have heard here. Incidentally, I think that a lot of the testimony has been quite useful, Mr. Chairman.

I have taken some notes on the suggestions on financial analysis, but no comments have been addressed to the fact that extensions as required in that law are part of the process of graduation. We have now in front of us a number of requests for extensions. A high percentage of those will be granted.

Mr. MITCHELL. If you would yield for just a moment.

Mr. McDADE. But Parren——

Mr. MITCHELL. I know that you have got time.

Mr. McDADE. I do not have time, I have got to go.

Mr. MITCHELL. I know that you wanted the time. But he said that there are 76 requests that have been submitted and pending in Central Office. You said a large number. I wanted to pinpoint the numbers. And to date, only two have been approved.

Mr. SANDERS. Mr. Chairman, we are just in the infancy of that, and there are more than 76. I do not know where you got your numbers.

Mr. McDADE. May I continue with my questions?

Mr. MITCHELL. Yes.

Mr. McDADE. Your answer is yes. And you can supply it for the record, if you wish, and to the committee the numbers where you are, and how many of them you expect, and the time frame that it is going to take to do this.

We have talked about the numbers. And do you have any number of how many might be involved in extensions, is there any way that you can give an educated guess?

Mr. SANDERS. About 300. We would guess that would come in. And I think yesterday when we had a meeting, or the day before, that throughout the region, throughout all of the regions, that something like 200 in the pipeline right now that are coming to us.

Incidentally, we have extended those who are waiting for a decision and whose term will expire in the next month or month and a half. We have guaranteed a 6-month notice to those people so that they are not cut off.

[Additional materials submitted by SBA for the record follow:]

Of the 162 firms which received FPPT's of 1 year and 14 months, 115 have filed for extensions. Of those 115 firms, 8 have actually received their extensions, and 77 are in the Central Office awaiting finalization.

Mr. McDADE. So you have taken somebody who is in the middle, and you have put them on a hold until you get an opportunity to really review it, despite the termination date in the amendment that was passed?

Mr. SANDERS. Yes, because we know that there is an unfairness involved if we have to have somebody wait until after their graduation date to determine whether to grant an extension.

Mr. McDADE. Let me ask you this question.

Will this extension policy take into account the desire of Federal agencies to use 8(a) firms to meet their minority contracting goals?

Mr. SANDERS. I think it obviously will. I think that you are talking about addressing the problem of alerting those agencies that they will be extended, absolutely.

Mr. McDADE. That is what I am doing. I want to make sure that in this entire process, as we look at efforts to make sure that we are all in conversation together. If you are going to hold a firm in, and that they do not get off of a possible procurement list, or bid list, or whatever.

Mr. SANDERS. That is right. Dr. Wright is in the process of formulating meetings both here in Washington and in the regions with the agencies to review the list of people that will continue to be eligible.

Mr. McDADE. So you can assure us that you are on top of that problem as well?

Mr. SANDERS. We feel that it has to be done.

Mr. McDADE. Yes, I would agree. Yesterday, we had reference here to an advisory opinion by the GAO. We have GAO reports coming at us. I guess on the Appropriations Committee on which I serve, we get one an hour, and sometimes they are very good, and sometimes they are very bad.

I want to know what the agency's reponse is, if you have had an opportunity to review it, and I do not know if you have or not. There were some disturbing comments that were raised here. Have you had a chance to look at that GAO opinion that was raised in this hearing room yesterday?

Mr. SANDERS. No.

Mr. McDADE. The agency has not formulated any position on it?

Mr. SANDERS. That has been received by the agency and we are looking at it.

Mr. McDADE. I understand.

Has it just come over to you for purposes of comment now?

Mr. SANTY. This is the GAO report on options and modifications?

Mr. McDADE. Yes, who are terminated. The chairman had word that it was out yesterday, and it is disturbing.

Mr. SANDERS. Yes.

Mr. McDADE. I wonder if we know where we are with that.

Mr. SANDERS. The first that I heard of it, was yesterday. We are certainly concerned about it. Needless to say, we are looking for reasons to think that it is offbase.

Mr. McDADE. Is it mandatory?

Mr. SANDERS. No.

Mr. McDADE. It is not mandatory?

Mr. SANDERS. No, it is dictum, which somehow makes it different.

Mr. McDADE. Mr. Chairman, I want to express my appreciation to you for permitting me to get these questions in. I would have others, but I absolutely have to leave. I appreciate your answers, and I appreciate you being here. Thank you, very much.

Mr. MITCHELL. Thank you for taking time. You have an awesome assignment on that Appropriations Committee, and just thanks for being here.

Mr. McDADE. It was a pleasure being with you, Mr. Chairman. Thank you, very much.

Mr. MITCHELL. Mr. Daub.

Mr. DAUB. Thank you, Mr. Chairman.

I am delighted to see you, Mr. Administrator. We appreciate you being here. Indeed, I am impressed by the very sincere commitment that you and your staff are making to fulfilling the promise of the section 8(a) program, and indeed, it is not easy.

Much of the dialog on this committee yesterday and today is not in the confrontational style as some may view it. As far as I am concerned, it is trying to make this program work better. I think that has been your commitment, and I commend you for it, and I wanted to say that publicly.

Mr. Chairman, incidentally, we have a copy of that. We received it yesterday at my request. I do think that that is something that this committee ought to be advised of, be it dicta or not. I find that after the protest is denied on page 4 that the subsequent two paragraphs in an unusual way indicates a process to then follow a protest being denied ought to be examined very carefully, and that your department ought to speak up, so that we have a very clear understanding of what that language means on pages 4 and 5 of the April 12 referral.

Mr. SANDERS. We will move as quickly as possible so that does not interfere.

Mr. DAUB. I think that should be done. Now, the 8(a) program is based on providing sole-source contracts: to minority businesses with the Small Business Administration as the prime contractor.

Does this pose a problem for other small businesses?

Mr. SANDERS. We constantly get complaints from the nonminority area of small business that these contracts are taken away, limiting their ability to compete on them. Certainly, they are critical. We get some unfair criticisms and some fair ones.

I think that is why it is so very, very important for the survival of the 8(a) program to demonstrate fairness not only to the minority community, but also to the nonminority community. I think that everybody in the nonminority community has to accept the fact that we have to go extra lengths to create a better situation for minority businesses. We have got to be sure that we achieve balance and fairness.

Mr. DAUB. I happen to have been a supporter, for example, of the set of programs that we called GSL programs and work studies programs within the college support program. For the abuses, for example, of reading that some 66,000 doctors had not paid back their loans.

My greatest fear was that the criticism of the noncollection and the nonpayment would indeed be viewed in reaction to say that the

program itself ought to be terminated, when in fact it was the enforcement and the perception of fairness that became the difficulty.

I indeed labored long and hard, as did many other Members of Congress, to be sure that the program was not essentially thrown out with the bath water as a result of that kind of criticism. I appreciate your remark, because I think that the same thing is true here.

Economically straining times cause other small businesses to complain about a program like this, some fair and some not fair in their criticism. I like your comment that we need a period of stability in this program to be sure that we get all of the program working the way that it ought to work. Do you believe that the 8(a) program is a business development program, or do you think that it is maybe still like a lot of people used to criticize, that it is strictly a Government contract brokerage operation?

Mr. SANDERS. Well, those words I have often used. It has sadly enough been used as that kind of brokerage program with many of the people involved in the administration of the program being cheerleaders, so to speak, without being the people that have the expertise to develop economic viability, competitiveness. That is what we have got to change.

We must have the techniques to turn this around, so that we can work with these firms to see that they achieve these other measures—bankability, if you will, and some of the other economic, financial, and managerial criteria by which you judge all firms.

Mr. DAUB. Do you think that the process of determining the length of a firm's 8(a) participation can be totally objective based upon a predetermined set of criteria?

Mr. SANDERS. No, not at all. One of my strong objections to this bill is that while it tries to achieve something objectively, and I can sympathize with that attempt, it becomes a bureaucrat's masterpiece.

You cannot manage that way. You have got to have some flexibility. You have got to know that if a firm is on the verge of renewing an association with a Federal agency or an ongoing contract that if they get the first lead-in after being in the program after 5 years, that you have got to give them another year or two, even though their financial data might indicate that by the objective standards that they should leave.

Mr. DAUB. I want to say with all respect to your chairman, that yesterday, and I do not know that it was reported to you, that the chairman himself indicated that the specificity of management of an agency operation by statute is something that he took wishes to avoid.

But indeed, when you have problems with the program, Congress does sometimes figure that they have to get involved. Maybe our biggest enemy is the lack of patience.

Mr. SANDERS. Well, of course, now we are discussing repealing what Congress decided a few years ago was the right way to go.

Mr. DAUB. I hope that you understand that from the Small Business Committee's point of view, and I am not going to put any more words in the chairman's mouth, or at least I took that to be what he meant yesterday, that indeed when he sees problems, and

many of us see them, and not in a partisan way at all, that we want to bring them to your attention.

We hope that sometimes when we do it, that you do not find that we are being confrontational to you. We may very well achieve our goal this way where maybe we have not gotten someone's attention in any other way.

Some have expressed the concern about the ability of graduating firms to compete against, for example, an IBM or a TRW. How do you handle an argument like that?

Mr. SANDERS. I have heard that argument and I cannot imagine that it does not get rejected out of hand. Nobody that I know of in their right mind in small business should try to start competing with IBM or Bechtel. To get a net level of competition requires extraordinary skill, luck, and a lot of other things.

Many very strong companies have become croppers trying to compete with IBM when they should have stayed in their particular area of expertise. Maybe somebody is trying to say that we want these minority firms to grow up to be as big as IBM and Bechtel.

I hope that we have started some that may some day grow there, but they will be long out of this program, hopefully, before they get to that size.

Mr. DAUB. The Latin America Manufacturers Association witness yesterday talked about abrupt cutoffs of contracts upon termination. Do you agree with that projection, or will the SBA endeavor to provide extensions and modifications?

Mr. SANDERS. As you know, our statement has been, and our advice to all of the procuring agencies has been that the modifications built into the contracts that they have can be honored; modifications and extensions that were built into the contracts before the date of graduation or in the case where we granted the extensions to the firms that were judged other than small should be exercised.

We would like to monitor those closely, so that those kinds of things are protected, and those people have the opportunity to expand those contracts.

Mr. DAUB. I would like for you to supply to the members of the committee and for the record on the 19, or 20, or 21 firms that have been exited from the program up to this point, I would like for you to supply for the committee the amount of business on their books that will carry over for another year, or 2, or 3, and indication, if you know, the options that then may exist thereafter.

In other words, I was impressed yesterday in the testimony with how many of these firms that had complaints about the program's rigidity for graduation still had this year, next year, and the year after, a substantial amount of remaining business.

Will you be taking that into account in these 400 and some firms that are on the next flight of review, how much business they have got on the books now that is 8(a), plus how much that can amount to over a period of years as they go to the graduate program with the Commerce Department?

Mr. SANDERS. Absolutely. We want to follow all of these firms quite closely to give them all of the advantages that are possible

for them to continue to grow and have contracts. Much of this includes the techniques of self-marketing.

We have the close relationship that we have cited with Commerce and MBDA. We also have some ideas about affecting the subcontracting goals. We do not think that they have been properly addressed by techniques within the Government procurement to fill in the squares.

[The information requested on the firms which exited the program was submitted for the record by the SBA. It follows:]

INTERNATIONAL BUSINESS SERVICES, INC.
1090 VERMONT AVENUE, N.W.
WASHINGTON, D.C. 20005

FIRM NAME: Active Contracts

SBA Contract No.	Procuring Agency	Procuring Agency Contract No.	Estimated Completion Date
SB3-4-0-8(a)76-C-736	NASA	NASW-2965	01/15/83 OK
SB3-4-0-8(a)80-C-2688	ENERGY	DE-AC01-80CS69141	09/30/83
SBA-4-0-8(a)81-C-0893	JUSTICE	JTUSA-81-C-0304	10/31/82
SB3-4-0-8(a)81-C-0970	AGRICULTURE	53-3187-1-25	10/15/82
SB3-4-0-8(a)81-C-1558	TRANSP.	DOT-FA-DA-7199	04/30/82
SB3-4-0-8(a)79-C-1027	ENERGY	DE-AC01-79CS-30162	10/31/82
SB3-4-0-8(a)-81-C-1782	TRANSP.	DTFA-01-81Y-20573	08/20/84
SB3-4-0-8(a)81-C-1913	INTERIOR	14-08-0001-20454	09/30/83
SB3-4-0-8(a)81-C-2028	NAVY	N00123-81-C-1220	12/08/82
SB3-4-0-8(a)81-C-2208	EDUCATION	300810431	11/30/82
SB3-4-0-8(a)81-C-2125	ARMY	DABT60-81-D-0002	09/29/83
SB3-4-0-8(a)81-C-2151	ARMY	DABT60-81-C-0091	09/29/83
SB3-4-0-8(a)82-C-4916	LABOR	J-9-M-2-0116	01/30/83
SB3-4-0-8(a)82-C-4930	TRANSP.	DTNH22-82-C-05173	09/28/84
SB3-4-0-8(a)79-C-1258	COMMERCE	NA79-GA-C-00043	09/30/83
SB3-4-0-8(a)80-0-299	CAB	80-C-83	12/22/82
SB3-4-0-8(a)80-C-202	TRANSP.	DOT-FA79-WAI-101	03/27/83
SB3-4-0-8(a)82-C-4431	TRANSP.	DTFA01-82-Y-20519	11/02/83
SB3-4-0-8(a)81-C-2029	DEA	DEA-81-16	09/30/83
79C-741	HHS	282-79-0052	3/31/83

JWK INTERNATIONAL CORPORATION

CURRENT 8(a) CONTRACTS

SBA NUMBER	CONTRACT NUMBER & AGENCY		COMPLETION DATE
SB3-4-4-0-8(a)-79-C-1031	AID/otr-C-1776	AID	5/31/83
SB3-4-4-8(a)80-C-647	HEW-100-80-0048	HEW/OS	4/22/83
SB3-4-4-8(a)80-C-646	DTNH22-80-C-07015	DOT/NHTSA	11/30/82
SB3-4-4-8(a)80-C-1026	271-80-5904	NIDA	2/28/83
SB3-4-4-8(a)-80-C-2630	DE-AC22-80ET14738	DOE	9/28/83
SB3-4-4-8(a)81-C-0732	GS-BD-006	GSA	12/82
SB3-4-4-8(a)81-C-0934	DTFA01-81-Y-30510	FAA/DOT	11/30/82
SB3-4-4-8(a)81-C-1701	N01-HB-1-3002	NIH/NHLBI	5/7/83
SB3-4-4-8(a)81-C-2041	DTFH61-81-C-00095	DOT/FHWA	1/22/83
SB3-4-4-8(a)81-C-1704	DE-AC01-81EI11854	DOE	5/8/83
SB3-4-4-8(a)81-C-1734	DE-AC01-81EI10775	DOE	9/27/83
SB3-4-4-8(a)81-C-2156	DTFH61-81-C-00071	DOT/FHWA	2/28/83
78-C-682	ADM-281-78-0008		

FIRM NAME A. L. Nellum and Associates, Inc.
Active Contracts

SBA Contract No.	Procuring Agency	Procuring Agency Contract No.	Estimated Completion Date
SB-3-4-0-8(a)-79-C-534	Department of Transportation/ FRA	DOT-FR-9095	May 17, 1983
SB3-4-0-8(a)81-C-2192	Defense Supply Serv.	MDA903-81-C-0584	December 31, 1982
SB3-4-0-8(a)81-C-2237	Department of Labor	11-2-0706-003	September 30, 1983
SB3-4-0-8(a)81-C-0943	Agency for International Development	LAC-0061-C-00-1003-00	May 31, 1984

FIRM NAME Raven Systems & Research, Inc.
Active Contracts

SBA Contract No.	Procuring Agency	Procuring Agency Contract No.	Estimated Completion Date
SB3-4-0-8(a)81-C-2368	EPA	68-01-6481	09/30/84
SB3-4-0-8(a)81-C-2177	Dept. of Education	300-81-0323	08/31/83
SB3-4-0-8(a)81-C-1655	FEMA	EMW-C-0488	09/30/83
SB-3-4-0-3(a)-81-C-2027	DOE	DE-AC01-81AD 65677	09/30/84
SB-3-4-0-8(a) 82-C-4476	U.S. Coast Guard	DTCG23-82-C-30008	09/30/84
SB-3-4-0-8(a) 82-C-4824	DEA	DEA-82-6	09/30/83
SB-3-4-0-8(a)-81-C-2422	Dept. of Navy	N00421-81-C-0237	09/30/84
SB-3-4-0-8(a) 80-C-2735	Dept. of Treasury	T-gto-80-19	09/30/85
SB-3-4-0-8(a)-81-C-2160	DOE	DE-AC65-81WP 15411	09/30/83
SB-3-4-0-8(a)-81-C-2379	Dept. of Army Corps. of Engineers	DACW57-81-D-0126	04/13/83
SB-3-4-0-8(a) 80-C-610	NOAA	NA 80RAK00001	04/14/85

FIRM NAME Rehab Group, Inc.

Active Contracts

SBA Contract No.	Procuring Agency	Procuring Agency Contract No.	Estimated Completion Date
78-C-300			
79-C-1092	FAA	DOT-FA-79-WAI-082	June 83 (Note 1)
79-C-1098	FAA	DOT-FA-79-WAI-113	September 30, 1984
80-C-0240	OFF EDUC	100-80-0002	April 16, 1984
80-C-0499	NPRDC	N00123-80-D-0591	March 2, 1983
80-C-1773	NRCC/NMPC	N00600-80-C-5202	January 83 (Note 2)
80-C-1894	HEW/SSA	SSA-600-80-D-0076	October 19, 1983
81-C-1371	LABOR	J-9-M-1-0036	Feb. 28, 1983 (Note 3)
81-C-1392	NRCC/NMPC	N00600-81-C-F181	Sept. 30, 1983 (Note 4)
81-C-1531	FEMA	EMWC0508	Sept. 30, 1983
81-C-1719	NAVAIR	N00019-81-D-0302	June 30, 1986
81-C-1802	NSC,SDGO	N00123-81-D-0984	Sept. 30, 1983
81-C-2444	ARMY	DAKF11-81-C-0093	Jan. 30, 1983 (Note 5)
81-C-2454	HHS	HHS-100-82-004	Feb. 28, 1983 (Note 6)
82-C-4343	DOL	J-9-M-209922	Dec. 17, 1982
82-C-4350	HHS/SSA	SSA-600-82-0050	May 10, 1985
82-C-4487	HHS	HHS-105-80-C-090	April 7, 1984
(Note 7)	NRCC/NMPC	N00600-83-D-0318	Sept. 30, 1983

Notes:

(1) Performance terminated for convenience February 1980. Close-out modification not yet executed by procuring agency.

(2) Performance completed Sept. 30, 1982. Modification to deliverables pending at NRCC Wash.

(3) Modification to extend past Dec. 12, 1982 is now being processed by DOL.

(4) Modification to extend (Oct. 1, 1982 to Sept. 30, 1983) being issued by NRCC.

(5) Performance completed Sept. 10, 1982. Modification pending to increase contract value.

(6) Modification to increase ceiling price by $1,850.00 is expected.

(7) Letter contract issued by NRCC Wash DC, signed by SBA Oct. 7, 1982. No SBA contract number assigned at that time. Copy of letter contract enclosed.

FIRM NAME Sterling Systems Incorporated
Active Contracts

SBA Contract No.	Procuring Agency	Procuring Agency Contract No.	Estimated Completion Date
81-C-0778	NAVY	N00039-80-C-0613	09-30-83
81-C-2009	USAF	F30-602-81-F-0267	05-20-83
82-C-4580	Harry Diamond Lab	DAAK21-82-C-0049	05-27-83
82-C-4597	Office Education	300-82-0194	09-30-83
8-C-238	FAA	DTFA-01-80-Y-10506	11-20-83
80-C-2689	FAA	DTFA-01-80-Y-30610	09-30-83
81-C-1591	DOE	DE-AC01-81-RG10521	09-25-83
81-C-1918	DOE	DE-AC65-81WP15398	03-31-83
81-C-2199	DOE	DEAC01-81-FE-16124	10-03-83
82-C-4975	DOE	DEAC22-82-PC-52735	09-30-83
82-C-4955	FAA	DTFA01-82-30572	09-30-83
81-C-1663	NAVY	N00019-81-C-0175	11-19-82 (Modification being processed)
81-C-2163	DLA	DLAH00-81-C-0175	12-30-82

FIRM NAME Unified Industries Incorporated
Active Contracts

SBA Contract No.	Procuring Agency	Procuring Agency Contract No.	Estimated Completion Date
SB3-4-0-8(a)80C-501	Federal Aviation Administration	DTFA01-80-Y-20500	09/30/83
SB3-4-0-8(a)80-439	Office of the Federal Inspector	OFI-80-0001	03/06/86
SB3-4-0-8(a)80C-1722	Naval Supply Center	N00189-80-D-0684	12/31/82
SB3-4-0-8(a)81C-0820	Naval Electronic Systems Command	N00039-81-C-0035	12/31/82
SB3-4-0-8(a)81C-0720	Department of Energy	DE-AC01-80CS-64007	12/31/82
SB3-4-0-8(a)81C-0951	Naval Sea Systems Command	N00024-81-C-4143	12/30/83
SB3-4-0-8(a)81C-1702	Communications and Electronics Readiness Materiel Command	DAAB07-81-D-6301	05/03/83
SB3-4-0-8(a)81C-1705	Comm & Elec Read Mat Com	DAAB07-81-D-6302	05/03/83
SB3-4-0-8(a)81C-1825	Naval Training & Equipment Center	N61339-81-C-0071	03/01/85
SB3-4-0-8(a)81C-1822	Environmental Protection Agency	68-01-6418	10/29/82
SB3-4-0-8(a)81C-1844	Navy Personnel Research and Development Center	N00123-81-D-0860	11/29/82
SB3-4-0-8(a)81C-2086	Naval Air Systems Command	N00019-81-D-0421	09/11/83

FIRM NAME Unified Services, Incorporated

Active Contracts

SBA Contract No.	Procuring Agency	Procuring Agency Contract No.	Estimated Completion Date
SB4-0-8(a) 81-C-1823	FAA Leesburg	DT-FA-05-81-C-71040	March 31, 1983
SB3-8-8(a) 78-C-225	Dept. of Interior Kennedy Center for Performing Arts	CX3000-9-0030-M06	September 30, 1983
SB3-3-0-8(a) 81-C855	Dept. of Agriculture	53-3K06-1-37	September 30, 1983

FIRM NAME Unified Industries Incorporated

Active Contracts

SBA Contract No.	Procuring Agency	Procuring Agency Contract No.	Estimated Completion Date
SB3-4-0-8(a)81C-0977	Troop Support and Readiness Command	DAAJ09-81-C-0977	09/30/83
SB3-4-0-8(a)81C-2431	Naval Sea Systems Command	N00024-82-C-4029	09/30/83
SB3-4-0-8(a)81C-2184	Department of Energy	DE-AC01-81EV10646	09/27/83
SB3-4-0-8(a)82C-5001	Naval Research Lab	N00014-82-C-2467	09/09/85

Highlife Helicopters
0851 Forestry Services

Contracts	Option Value	
2/14/86	$1,592,000	with 2 year options
9/28/83	No options	
9/14/83	No further options	
5/14/83	No further options	
8/19/83	No further options	
10/14/83	No further options	
9/30/83 85	$1,011,000	with 2 year options
2/7/84 86	174,000	with 2 year options
2/2/84	No options	

Boone Young — 2 contracts--expires at the end of this fiscal year. No options.

Uniworld — No contracts.

Dialogue Systems — No contracts.

Regard Security — No contracts.

J&J Maintenance — 2 contracts with options
(1) $841,000 with two options
$ 1,143,000 option year 1
$ 1,173,000 option year 2

(2) contract until end of fiscal year
$1,582,000 option

Mr. DAUB. I think that that is all I have at this point.

Mr. MITCHELL. Thank you, very much, Mr. Sanders.

Mr. SANDERS. Thank you, sir.

Mr. MITCHELL. Thank you for sticking with us under your time pressures. But sometimes I feel that I am almost living in Alice-in-Wonderland.

You say that you hope these firms that grow large, and graduate from the program would become as big as Bechtel's and IBM's, but that you do not expect that any time in the near future, and I do not either.

Mr. SANDERS. That is not an extraordinary statement, I do not think.

Mr. MITCHELL. No, nor do I. But on the other hand, the harsh reality is that once out of that program because they are deemed no longer small, that is who they are going to compete with; that is just real.

Mr. SANDERS. I do not think that that is true, sir.

Mr. MITCHELL. That is true.

Mr. SANDERS. Mr. Chairman, may I beg to point out an illustration?

Mr. MITCHELL. Yes.

Mr. SANDERS. There are hundreds of firms in the high technology area that do not compete with IBM. They are medium-sized firms, and that is a pretty good sized firm. I think that if anybody could aspire to achieving a size that showed $100 or $200 million worth of gross revenues and a good profit margin, why should you say that we expect them to be bigger? A lot of companies choose not to get into the arena with the giants; that is my point.

Mr. MITCHELL. My point is, and I will end it on this note, my whole point is the harsh reality of the business world in which we live means that a minority contractor, the 8(a) firm, who has gotten big enough to come out is not going to be in competition with Bechtel, but he is going to be in competition with the same 10 construction firms that do all of the building in this city, and he is handicapped.

Well, we will chat again.

Mr. SANDERS. All right, we will chat about that. I do not quite accept all of that.

Mr. MITCHELL. Well, that is the reality. That is why I said that sometimes I think people live in a strange world.

Mr. SANDERS. You came from a world that I came from, the construction industry.

Mr. MITCHELL. Yes, I know. We may submit additional questions for you. Thank you, very much.

Mr. SANDERS. Thank you, sir.

Mr. MITCHELL. I hope you make your next meeting on time.

Mr. SANDERS. Thank you, for your courtesy, Mr. Chairman.

Mr. MITCHELL. Thank you.

Our next witness is Mr. Rivera, Director of the Minority Business Development Agency. Thank you for being here, Mr. Rivera. If you have staff that you wish to join you up here, that will be fine.

We have a copy of your statement. Thank you for waiting so long to present it. If you care to extract from that, and just make your salient points, that would be helpful.

TESTIMONY OF VICTOR M. RIVERA, DIRECTOR, MINORITY BUSINESS DEVELOPMENT AGENCY, DEPARTMENT OF COMMERCE

Mr. RIVERA. I will highlight it. Thank you, Mr. Chairman.

Mr. Chairman, and members of the committee, I am pleased to appear before you today to discuss H.R. 863. We share the concern of the committee that minority firms be offered every possible opportunity to participate in more Federal procurement programs. Through our minority business development center network, we are gathering information from the minority business community, which supports the need for an improvement in the 8(a) program.

Some of the concerns expressed by the minority business community about the 8(a) program whether real or imagined include, and I am sure that you have heard most of these, we hear them say that it is a difficult and time consuming process to be accepted into the 8(a) program. Consequently, many firms are discouraged from participating.

The program is viewed by some as constantly being changed, and creating a sense of uncertainty which is confusing to participants and potential participants. We hear from some that a small number of 8(a) firms are awarded a disproportionate dollar share of the available contracts.

We hear that the 8(a) program does not really prepare a minority firm for competition in the public and private sectors of business. We hear that firms no longer participate in the 8(a) program because they were deemed to be other than small, and have been abandoned by the Government.

Mr. Chairman, MBDA and SBA are working jointly to resolve the problems, and clarify the misconceptions. At the Department of Commerce, we have taken a major step over the last year in conjunction with the SBA to improve the quality of services to minority firms before, during, and after participation in the 8(a) program.

Most notably in support of this effort, we are utilizing our national network of 100 minority business development centers located in over 100 cities with the largest minority populations.

MBDA has also taken a number of actions to help meet the special needs of firms which are completing participation in SBA's 8(a) procurement program. As you know, all firms completing the 8(a) program are eligible for MBDA assistance regardless of size.

Under the terms of an agreement entered into on March 31, 1982, MBDA agreed to provide transitional support to 8(a) firms. SBA agreed to send to MBDA needs assessment on 8(a) firms at least 14 months before completion of the program. Those firms expressing a willingness to participate in MBDA's transition effort are offered a wide variety of management and technical services as needed from the nearest MBDA funded minority business development center.

Last year, these centers assisted 509 8(a) certified firms. We expect to see a dramatic increase this year. The primary need of the 8(a) firm near program completion is new market opportunities.

We are in the process of identifying Federal procurement opportunities which can be made available during this transition. For ex-

ample, at Secretary Baldrige's request. Paul Thayer, the Deputy Secretary of Defense, has written the top 100 Defense contractors encouraging them to provide greater subcontracting opportunities to recent participants in the 8(a) program.

We have also asked each Federal agency's Office of Small and Disadvantaged Small Business Utilization to assist in identifying additional procurement opportunities. Special efforts are being made by the National Minority Supplier Development Council to identify private sector procurement opportunities.

And MBDA has also asked the State and local funded organizations to assume a greater role in identifying State and local procurement contract opportunities for these firms.

Recognizing that these firms may need additional sources of capital to take advantage of these opportunities, MBDA is working with major financial institutions and associations to help identify capital opportunities for these firms.

While we have only begun this effort, willingness expressed by these groups to help these minority firms is encouraging. Now that transition activities are underway, there will be a flow of services and information about business opportunities for 8(a) firms as well as expanding access to capital to enable them to take advantage of the opportunities.

Commerce Secretary Baldrige, Deputy Secretary Fiske, and I have met with minority firms determined to be other than small on numerous occasions, to discuss their individual concerns, and the efforts that Commerce is making to assist them.

Their efforts include mobilizing the Department of Commerce programs and resources to increase the level of assistance to 8(a) firms, especially those other than small. And in his capacity as chairman of the Cabinet Council on Commerce and Trade, the Secretary is exploring administrative changes in the procurement process for former 8(a) participants.

As you know, Mr. Chairman, the Secretary met with you recently to reaffirm his strong commitment to Commerce's and MBDA's program to assist the 8(a) firms.

The goal of the SBA 8(a) program is to promote the development of thriving, competitive minority owned and managed firms. The 8(a) program will not achieve this goal, if 8(a) firms are not making progress toward the day where they can compete successfully with other firms for contracts and procurements in the private and public sectors.

Mr. Chairman, positive changes are taking place at SBA and MBDA to better coordinate our activities in support of 8(a) firms. Admittedly, this coordination is late, but progress is being made. In view of new activities under way and planned at SBA and at the Department of Commerce to assist 8(a) firms, we cannot support H.R. 863. H.R. 863 will provide a disincentive for minority business to leave the 8(a) program.

This disincentive concerns MBDA for two reasons. First, because it discourages current 8(a) participants from diversifying to increase growth in non-8(a) sales, and also because it limits entry of new minority firms into the 8(a) program.

The Department of Commerce, Mr. Chairman, estimates that there are about 40,000 potential participants in the 8(a) program.

As you know, they are currently in the neighborhood of 2,000. Revising the size and participation criteria in the fixed program participation term so soon after its implementation sends a confusing signal to the minority business community.

Once again, the Federal commitment to minority business development is about to undergo major changes. Unfortunately, some firms are still convinced that they will never be viable or competitive, and that legislative initiatives such as H.R. 863 will give them the economic security that they need to continue in operation.

Mr. Chairman, I believe that this provides a false sense of security, and reflects an unfortunate mind set that minority firms are less than qualified and capable of competing successfully in the marketplace.

Therefore, we respectfully urge the committee to reconsider this bill in light of your concerns. The interests of minority business development would be best served by allowing the SBA to carry out its mandate under Public Law 96-481. I am now prepared to answer any questions that you may have, sir.

[Mr. Rivera's prepared statement follows:]

PREPARED STATEMENT OF VICTOR M. RIVERA, DIRECTOR, MINORITY BUSINESS DEVELOPMENT AGENCY, U.S. DEPARTMENT OF COMMERCE

Mr. Chairman and members of the committee, I am pleased to appear before you today to discuss H.R. 863. We share the concern of the committee that minority firms be offered every possible opportunity to participate in more Federal procurement programs.

Through our minority business development center network, we are gathering information from the minority business community which supports the need for improvement in the 8(a) program.

Some of the concerns expressed by the minority business community about the 8(a) program include:

It is a difficult and time-consuming process to be accepted into the 8(a) program. Consequently, many firms are discouraged from participating;

The program is viewed as constantly being changed, creating a sense of uncertainty which is confusing to participants and potential participants.

A small number of 8(a) firms are awarded a disproportionate dollar share of the available contracts.

The 8(a) program does not really prepare a minority firm for competition in the public and private sector of business; and

Firms no longer participating in the 8(a) program because they were deemed to be "other than small" have been abandoned by the Government.

Mr. Chairman, MBDA and SBA are working jointly to resolve these problems.

At the Department of Commerce, we have taken a major step over the last year in conjunction with the SBA to improve the quality of services to minority firms before, during , and after participation in the 8(a) program. Most notably, in support of this effort we are utilizing our national network of 100 minority business development centers located in over 100 cities with the largest minority populations.

MBDA has also taken a number of actions to help meet the special needs of firms which are completing participation in SBA's 8(a) procurement program. All firms completing the 8(a) program are eligible for MBDA assistance, regardless of size.

Under the terms of an agreement entered into on March 31, 1982, MBDA agreed to provide transitional support for 8(a) firms. SBA agreed to send to MBDA needs assessments of 8(a) firms at least fourteen months before completion of the program. Those firms expressing a willingness to participate in MBDA's transition effort are offered a wide variety of management and technical services as needed from the nearest MBDA funded minority business development center. Last year, these centers assisted 509 8(a) certified firms.

The primary need of the 8(a) firm nearing program completion is new market opportunities. We are in the process of identifying Federal procurement opportunities which can be made available during this transition. For example, at Secretary Baldrige's request, Paul Thayer, the Deputy Secretary of Defense, has written the top 100 defense contractors encouraging them to provide greater subcontracting oppor-

tunities to recent participants in the 8(a) program. We have also asked each Federal agency's office of small and disadvantaged business utilization to assist in identifying additional procurement opportunities.

Special efforts are being made by the National Minority supplier Development Council to identify private-sector procurement opportunities. MBDA has also asked its State and local funded organizations to assume a greater role in identifying State and local procurement and contract opportunities for these firms.

Recognizing that these firms may need additional sources of capital to take advantage of these opportunities, MBDA is working with major financial institutions and associations to help identify capital opportunities for these firms. While we have begun this effort, willingness expressed by these groups to help these minority firms is encouraging. Now that transition activities are underway, there will be a flow of services and information about business opportunities for 8(a) firms; as well as expanding access to capital to enable them to take advantage of the opportunities.

Commerce Secretary Baldrige, Deputy Secretary Fiske and I have met with minority firms determined to be "other than small" on numerous occasions to discuss their individual concerns and the efforts commerce are making to assist them. These efforts include:

Mobilizing the Department of Commerce programs to increase the level of assistance to 8(a) firms, and

Exploring administrative changes in the procurement process for former 8(a) participants.

The goal of the SBA 8(a) program is the development of thriving, competitive minority-owned and managed firms. The 8(a) program will not achieve this goal if 8(a) firms are not making progress toward the day when they can compete successfully with other firms for contracts and procurements in the private and public sectors.

Mr. Chairman, positive changes are taking place at SBA and MBDA to better coordinate our activities in support of 8(a) firms. Progress is being made.

In view of the activities underway and planned, we cannot support H.R. 863. H.R. 863 will provide a disincentive for minority businesses to leave the 8(a) program. This disincentive concerns us at MBDA for two reasons. First, because it discourages current 8(a) participants from diversifying to increase growth in non-8(a) sales. And also because it limits entry of new minority firms into the 8(a) program. Revising the size and participation [illegible] in the fixed program participation term, so soon after its implementation [illegible] a confusing signal to the minority business community. Once again, the [illegible] commitment to minority business development is about to undergo major ch[illegible]

Unfortunately, some firm[illegible] are [illegible] vinced that they will never be viable or competitive and that legis[illegible]ve [illegible] such as H.R. 863 will give them the economic security they need to co[illegible]tion. Mr. Chairman, I believe this provides a false sense of security [illegible] unfortunate mind-set that minority firms are less than qualified [illegible] competing successfully in the marketplace. Therefore, we urge the [illegible] to reconsider this bill in light of our concerns. The interests of minority business development would be best served by allowing the SBA to carry out its mandate under Public Law 96-481.

I am now prepared to answer any question you or the committee may have at this time. Thank you again for this opportunity to express our concerns.

Mr. MITCHELL. Thank you, very much, Mr. Rivera.

Let me just explain for the record what the thrust of this bill is. It is to do away with the faulty operational premises on which SBA and MBDA have operated from their inception. When the MBDA first got started, it was known as the Office of Minority Business Enterprise.

There was no discussion about making minority firms competitively viable. It was primarily politically motivated. It had enormous political overtones with the Nixon administration, and especially the Nixon reelection bid. There was an emphasis on getting some firms into business, but there was no emphasis on competitive viability.

The same thing has happened under the other administrations. Certainly, these problems are shared with SBA. Its thrust has also been essentially to get somebody into business—a numbers count, and it also has had enormous political overtones.

For the first time, we are going at what makes a minority business really, really successful, and that is to make it competitively viable. I agree with you. I think that many, maybe the majority of minority firms can become competitors in the marketplace. But that has not been the emphasis up to this point, and that is what my bill addresses.

Now let me just ask you one or two questions, if I may, please. You referred to the President's statement, or someone else did, of $15 billion over the next 3 years to go to minority businesses.

At the same time that is happening, the Small Business Administration is planning to end participation in the 8(a) program for 440 firms. These firms can apply for extensions, but right now, 440 are going to end their participation.

According to your office, the Federal Government purchased $4.3 billion from minority businesses in 1982. Of that number, of all of those purchases, nearly 20 percent of all of those purchases took place with the 440 firms that are to be moved out. How in the world can the President achieve his goal, if the firms that made up 20 percent of the total are going to be eliminated?

Mr. RIVERA. I question that figure 20 percent. It appears to be very high.

Mr. MITCHELL. It is high, and it is your data.

Mr. RIVERA. I have not seen it, but I will check it out. To answer your question, a $5 billion a year average will be quite a challenge. But bear in mind, sir, that that includes the 8(a) program, it includes direct contracts, it includes subcontracts.

Mr. MITCHELL. Right.

Mr. RIVERA. We are making very strong efforts to increase especially the subcontracting portion as well as the direct contract portion. We expect the $1.9 billion procurement level probably to be achieved this year. We are not going to see the dramatic increases that we have seen over the past.

But we are going to work very hard to make sure that the 400 to 500 new 8(a) firms that come into the program this year, to help maximize their share of the 8(a) contracts. It is not going to be easy, sir. I recognize that.

Mr. MITCHELL. I hope that you are right. Although it is incredible to me to assume that a new firm coming into the program with 1-year's experience can match a firm that has 5-years experience; maybe you can perform this miracle.

Mr. RIVERA. I heard Mr. Sanders say that probably a large percentage of those 400 firms that are expected to graduate this year will probably not.

Mr. MITCHELL. I hope that they will not. That is what I said.

Mr. RIVERA. That will give us the necessary time that we need.

Mr. MITCHELL. I said that the reality is that as of right now, they are slated to go. We do not know what the final decision is going to be on extension requests. He is responsible for that. But the immediate reality is that they are now slated to go.

He is struggling very mightily on behalf of some 20 firms, or 18 firms that got to be too large, and were moved out of the 8(a) program.

You and the Secretary are making prodigious efforts to try to ensure that the firms will stay in business.

Mr. RIVERA. Right.

Mr. MITCHELL. What, if anything, are you going to be able to do when you have 440 such firms given your limited resources, what can you possibly do for the 440?

Mr. RIVERA. OK. The idea is that we have in place over 100 minority business development centers and managing consulting firms out there. Given hopefully the fact that we will have at least a 1-year, maybe in some cases, a 2-year leadtime, we will be able to improve our performance over the past.

I think that I addressed that issue at the outset. I think that we have to do a much better job assisting these firms prior to certification, during the certification process, during the participation process, the transitional phase that is a year to two prior to exiting the program, and then another program. It is much too late at this point. It becomes extremely difficult, even in the last 6 months over to the last year, or especially after graduation, to assist these firms.

Mr. MITCHELL. I agree.

Mr. RIVERA. We have to start the process much earlier.

Mr. MITCHELL. After the fact, it is not very helpful.

Mr. RIVERA. Right.

Mr. MITCHELL. You have 100 business development centers around the country?

Mr. RIVERA. Right.

Mr. MITCHELL. Have they been able to help any of the firms that will be forced out of the program?

Mr. RIVERA. Yes, sir.

Mr. MITCHELL. Can you give me a specific illustration of a contract, not a linking up to a potential contract, but just one contract that has been awarded?

Mr. RIVERA. I know that I can produce a couple for the record of 8(a) firms that we have assisted in procuring the contracts.

Mr. MITCHELL. For the 23 firms?

Mr. RIVERA. For the 19?

Mr. MITCHELL. They are now 19. One contract that has been awarded to any one of those firms.

Mr. RIVERA. Sir, we have been working with those firms for about 2 months. It takes, as you know, more than 2 months to identify and assist in landing contracts.

Mr. MITCHELL. The only reason I raise the question, and I am not trying to be negative, is that you stated you have 100 business development centers out there which can offset the trauma of those 8(a) firms which are being removed from the program—that the centers are right there on the line assisting these 8(a) firms.

But the acid test comes whether any of the 19 have been linked up with a contract, just those 19 that we are talking about.

Mr. RIVERA. I cannot cite an example. I know that several are in the process. But I cannot say that the contract has been landed or signed. I will check with that for the record, and report it to you.

Mr. MITCHELL. Thank you, very much, Mr. Rivera.

Mr. RIVERA. Thank you.

Mr. MITCHELL. I know that Congressman Silvio Conte wanted very much to be with you. I understand that if there is any possible way that he can get out of his other committee meeting, he will try

to join us during this session. We will submit his statement for the record.

[Mr. Conte's prepared statement follows:]

PREPARED STATEMENT OF HON. SILVIO CONTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. Chairman, thank you for allowing me to participate in these hearings today. The 8(a) program has had its share of problems lately, and you should be commended for your efforts to reform the program. Let me assure you that Members from both sides of the aisle desire to find an equitable, constructive solution to the problems currently facing the 8(a) program.

I would like to introduce a constituent of mine, Mr. Jamon Chan of Belchertown, Mass. Mr. Chan is a former teacher at M.I.T. In 1980 he formed Computer Systems Technology, Inc. My office has been working with him for nearly 1 year now in a so far futile attempt to get him enrolled in the 8(a) program.

Mr. Chan had quite a time getting here today. He showed a great deal of persistance in getting from Massachusetts to Washington despite an 18-inch snowfall. He has shown the same persistance in his efforts to participate in the 8(a) program. I believe his testimony will be very valuable to the subcommittee.

Mr. Chan, thank you for coming and welcome.

Mr. MITCHELL. Our next two witnesses for the next panel are Mr. Chan from Computer Systems Technology, and Mr. Patel who is president of Patel Structural Engineering.

Please go right ahead, Mr. Chan.

PANEL CONSISTING OF JAMON CHAN; AND V. H. PATEL

TESTIMONY OF JAMON CHAN, PRESIDENT, COMPUTER SYSTEMS TECHNOLOGY, INC.

Mr. CHAN. Thank you, Mr. Chairman for the opportunity to speak to this subcommittee. It is quite an honor. I have to say that I am a little bit nervous.

Mr. MITCHELL. Do not ever be. These four frail mortals who sit before you should not make anyone nervous.

Mr. CHAN. It is a little comforting.

My name is Jamon Chan, founder and president of Computer Systems Technology, Inc., of Belchertown, Mass. My company specializes in helping companies select computer hardware, develop software around applications in data base design, fiscal management reports, and word processing.

I started Computer Systems Technology, Inc., with myself and one other employee. Now I have 5 full-time and 6 part-time employees. Of these 11, 6 are minorities. I also have 15 people on retainer for troubleshooting and research and development.

Starting a computer company requires a large amount of startup capital and personnel. Even after securing many contracts, I am deeply in debt, and still have to borrow money using all of my assets including my house as collateral.

I first found out about the fixed program of the Small Business Administration in 1980. It sounded perfect, and was just what I needed. The program was seeking small minority firms who were technically qualified and undercapitalized. My firm was and still is undercapitalized.

I arranged an appointment with a SBA official in Boston, and was told that although my firm was qualified, that there was not enough contract support for already existing 8(a) minority firms in

my field. At that time, there were no 8(a) computer firms in the Northeast. To the best of my knowledge, there are still no 8(a) computer firms in Massachusetts. This is especially ironic since Massachusetts is the "Silicone Valley" of the East.

I was told that the chances of my firm gaining eligibility was next to impossible, and that I should not waste my time with the lengthy application process, particularly since there was no chance of success. I heeded this advice until about a year ago, when I heard a rumor that SBA was going to graduate a number of 8(a) firms, whose income and staff level exceeded SBA standards for small businesses.

These graduations were to open up opportunities of entrance into the program. I was very excited. I again applied, and again was refused because of a lack of contract support for computer companies. Apparently, there were just too many computer companies, and not enough work.

I was disappointed and confused, but I accepted SBA's answer. Then I read in the newspaper about a GAO report that criticized the SBA's administration of the 8(a) program, especially in regard to contracts awarded to computer firms. The GAO reported on the following abuses in the administration of the 8(a) program.

A number of firms, questionably qualified at best, were awarded large contracts that were in excess of a Government regulation that sets a maximum $4 million in sales over a 3-year period in order for a firm to maintain the small business status.

The example that GAO cited was Misso Services of Falls Church, Va., a firm which received $12 million out of a possible $13.5 million contract over a period of 3 years. The reason given by SBA for award to Misso Services that amount of money was that there were no other minority firms in the 8(a) program to receive these contracts. This is in direct contradiction to the reasons given for my rejection of 8(a) status, that there were too many computer firms already in the program.

Second, virtually no client companies have completed the program in the last 4 years. Third, the current portfolio has approximately 2,264 companies of which 1,162 or 51.3 percent have been in the program for 5 to 13 years.

Four, the program's problems have been known for years. Criticism, mostly justified, has come from many sources, yet corrective action has yet been taken.

However, despite these criticisms, I was informed that I should reapply for the third time, because there was still hope. The U.S. District Court has agreed with the GAO, and has ordered SBA to graduate older firms to make room for new and qualified firms.

I believe that H.R. 863 would place this third application in great jeopardy. I feel that it is inappropriate to create only three ways for an 8(a) firm to exit: voluntary withdrawal, graduation through a criteria of competitiveness, or termination to be determined by a due process proceeding under the Administrative Procedure Act.

H.R. 863 will interminably delay firms from leaving the 8(a) program, thereby creating new openings for new firms like myself not to exist. Although I agree with the committee's efforts to create a viable 8(a) program that offers opportunities to minority firms to

grow, and make healthy contributions to the economy, I believe H.R. 863 does achieve that goal.

I think that it is ironic because I come from Massachusetts, which is considered in the computer industry as the cradle of computer software development, that my firm will be denied a chance to bring computer service to the Government.

I do not have the resources as other 8(a) firms do to hire a public relations firm from Washington. I can only go through the advisory route provided by my Representative, Congressman Silvio Conte, to advocate for myself and my firm.

I thank you for the time, Mr. Chairman, and I will be pleased to answer any questions that I can.

[Mr. Chan's prepared statement follows:]

PREPARED STATEMENT OF JAMON CHAN, PRESIDENT, COMPUTER SYSTEMS TECHNOLOGY, INC.

My name is Jamon Chan, founder and President of Computer Systems Technology, Inc. of Belchertown, Massachusetts. My company specializes in helping companies select computer hardware, develop software around applications in data base design, fiscal management reports, and word-processing. I started Computer Systems Technology, Inc., with myself and one other employee. Now I have five full-time and six part-time employees. Of these eleven, six are minorities. I also have fifteen people on retainer for trouble-shooting and research and development.

Starting a computer company requires large amounts of startup capital and personnel. Even after securing many contracts, I am deeply in debt and still have to borrow money using all my assets, including my house, as collateral.

I first found out about the 8(a) program from the Small Business Administration in 1980. It sounded perfect and was just what I needed. The program was seeking small minority firms who were technically qualified and undercapitalized. My firm was, and still is, undercapitalized.

I arranged an appointment with an SBA official in Boston and was told that although my firm was qualified there was not enough contract support for already existing 8(a) minority firms in my field. At that time, there were no 8(a) computer firms in the Northeast; and, to the best of my knowledge, there are still no 8(a) computer firms in Massachusetts. This is especially ironic since Massachusetts is the "Silicone Valley" of the East. I was told the chances of my firm's gaining eligibility was next to impossible and that I shouldn't waste my time with a lengthy application process particularly since there was no chance of success. I heeded this advice until about a year ago when I heard a rumor that SBA was going to graduate a number of 8(a) firms whose income and staff levels exceed SBA standards for small businesses. These graduations would open up possibilities of entrance into the program. I was very excited. I again applied and again was refused because of lack of contract support for computer companies. Apparently, there were just too many computer companies and not enough work. I was disappointed and confused, but I accepted SBA's answer. Then I read in the newspaper about a GAO report that criticized the SBA's administration of the 8(a) program, especially in regard to contracts awarded to computer firms.

The GAO reported on the following abuses in the administration of the 8(a) program:

(1) A small number of firms, questionably qualified at best, were awarded large contracts that are in excess of a "government regulation that sets a maximum $4 million in sales over a 3-year period in order for a firm to maintain its small business status." The example that GAO cited was Misso Services of Falls Church, Virginia, a firm which received $12 million out of a possible $13.5 million contract over a period of three years. The reason given by SBA for awarding Misso Services that amount of money was that there were no other minority firms in the 8(a) program to receive these contracts. This is in direct contradiction to the reasons given for my rejection of 8(a) status—that there were too many computer firms already in the program;

(2) Virtually no client companies have completed the program in the last four years;

(3) The current portfolio has approximately 2,264 companies of which 1,162 or 51.3%, have been in the program for 5 to 13 years; and

(4) The program's problems have been known for years. Criticism, mostly justified, has come from many sources yet meaningful corrective action has yet been taken.

However, despite these criticisms, I was informed that I should re-apply for the third time because there was still hope. The U.S. District Court had agreed with the GAO and has ordered SBA to graduate older firms to make room for new and qualified firms.

I believe H.R. 863 would place this third application in great jeopardy. I feel it is inappropriate to create only three ways for an 8(a) firm to exit—voluntary withdrawal, graduation through a criteria of competitiveness, or termination to be determined by a due process proceeding under the Administrative Procedure Act. H.R. 863 will interminably delay firms from leaving the 8(a) program thereby creating new openings for new 8(a) firms like mine. Although I agree with the Committee's efforts to create a viable 8(a) program that offers opportunities to minority firms to grow and make healthy contributions to the economy, I believe H.R. 863 does not achieve that goal.

I think it's ironic that because I come from Massachusetts, which is considered in the computer industry as the cradle of computer software development, my firm will be denied a chance to bring computer service to the government.

I don't have the resources as some other 8(a) firms do to hire a public relations firm from Washington. I can only go through the advisory route provided by my representative, Congressman Silvio Conte, to advocate for myself and my firm.

Thank you for your time, Mr. Chairman. I will be pleased to answer any questions you and the other Members may have.

Mr. MITCHELL. I thank you for coming. I appreciate the frustration that you obviously feel right now, but I think it is a mistake to take that frustration out against the legislation. Based on your testimony alone, you have not gotten a contract because SBA has been less than honest with you; that is the reason.

When they told you they were just surfeited with computer firms, and that there could be no contract support for all of them, it was simply not true. They misled you. That it seems to me should not be the reason to oppose my legislation.

This is not the first case in which SBA has deliberately mislead minorities seeking business. We witnessed that last year when my staff made calls to the district offices and we were informed by those SBA district offices that there were no direct loan moneys.

The Administrator the day before had sat where you are sitting, and told us about this grandiose plan that he had for the use of direct loan money, how, when one region ran out, then they could shift the money to another. Believe me, I am sympathetic with you; enormously so. I would just almost beg of you to be very, very conscious of the fact that you were given misleading information by the Small Business Administration.

Mr. CHAN. I can appreciate that. I have to be more than honest, and say that I do not understand all of the complexities of the issues. However, I would like you to appreciate my position. The only way that I can probably ever be able to get into the program is through graduation of other firms.

Mr. MITCHELL. No, that is exactly the point that I am trying to make. That is not true. That is precisely the point that I want to make. I pledge to you right now that I will work with Congressman Conte to try to get your certification. You are not in my district, but I will pledge myself to give it my best shot.

But the point is that you were misled, and given the impression that the only way that you could get in was by forced graduation. I think that it is heinous on the part of anybody in the Small Business Administration to do that to you. It is unfair and unjust.

Set up a meeting for me with Congressman Conte, and let us put our staffs to work on this in order to get your firm certification.

Mr. CHAN. OK, thank you, Mr. Chairman.

Mr. MITCHELL. Mr. Patel.

TESTIMONY OF V. H. PATEL, PRESIDENT, PATEL STRUCTURAL ENGINEERING CONSULTANTS, INC.

Mr. PATEL. Mr. Chairman, I am the owner of a small consulting engineering firm in Charlotte, N.C., and therefore perhaps I will address the SBA problem as it relates to the architectural engineering profession than in general.

Mr. Chairman, after graduating from the University of Michigan in 1961, and after nearly two decades of engineering experience, I decided to try to fulfill my American dream, and start my own business in 1980. With my experience, education, and dedication, I had all the ingredients necessary for a successful businessman in a free enterprise marketplace.

During my 22 years of engineering experience, I have been involved in the structural design of many high-rise buildings, hospitals, waste water treatment plants, industrial plants, and many other types of structures. A structural engineer is responsible for the design of building skeletons and the foundations for assuring that the structure can support all of the loads imposed on it.

It would also withstand wind and earthquake forces. An engineer works in close cooperation with architects and other engineering disciplines. Mr. Chairman, I soon realized that I faced plenty of bias and disadvantages not common to other businessmen. It is extremely difficult for a person of a different culture, race, religion, or national origin to get his foot in the door, and get his share of business.

The prejudice suffered by ethnic Americans is very subtle, and cannot easily be proven. In the architectural and engineering profession, the most qualified firm does not necessarily get the job in the private sector. To obtain a contract for a U.S. Government project is very difficult for a small company.

All U.S. Government procurement opportunities are published in Commerce Business Daily. Almost all the announcements in CBD state that the small and minority owned firms, and the firms with no prior experience on Government projects are encouraged to apply.

Yet under the provisions of Brooks bill, the agencies are required to negotiate only with the highest ranked firms. Since a firm's rank is based on its past experience on Government projects and its size, among other things, a small minority firm has practically no chance to successfully compete.

In January 1980, I applied for admission into the 8(a) program of the Small Business Administration. The program is created by the Congress to help small and minority-owned businesses become competitive by assisting them for a period of 3 to 5 years. My application and subsequent appeal were rejected by the SBA on the grounds that there was not enough work available, and that I had failed to prove that I am a socially and economically disadvantaged person.

In July 1981, the National Association of Americans of Asian-Indian Descent and seven businessmen of Asian Indian origin filed a petition with the SBA to classify Asian Indians as a socially disadvantaged group. I was one of the copetitioners. Our petition was backed by massive evidence and statistics from the U.S. Department of Commerce studies that showed that Asian Indian businessmen suffer from many biases and prejudices. The petition was granted by the SBA in August 1982.

Again in July 1982, I applied for admission into the SBA 8(a) program. Again, I was told that there was no contract support available. There are two main reasons for the difficulties faced by companies like mine in getting into the program. One is that many companies have been in the program for too long. The purpose of the program is to help disadvantaged firms become self-supporting and competitive in 5 years. If admitted into the program, we intend to become a viable and competitive business in 5 years.

Not only will we achieve this in the area of structural engineering, which is our speciality, but we intend to enter other branches of engineering and architecture, and be self-supporting in 5 years.

This is a reasonable goal, and can be achieved by anyone who tries. In my opinion, many firms in the program feel that the Government should support them forever. The program and the companies must work toward graduation in no more than 5 years. Any company that is not trying to expand into the commercial market while in the program is not being fair to other smaller disadvantaged firms who deserve a chance.

If a firm cannot expand into the commercial market in 5 years, it would seem to me that it has no ability or intention of becoming an independent business capable of surviving in a capitalist society.

The second reason that many companies have difficulty getting into the 8(a) program is that many Government agencies do not participate in the 8(a) program. The U.S. Department of Defense is the largest purchaser of engineering services. Yet the Air Force and the Army Corps of Engineers participate in the 8(a) program only to a certain extent, and the Navy Engineering Command flatly refuses to participate. After my application was rejected last August, I contacted over 100 Government offices which buy engineering services, and obtained letters from several agencies indicating their support for engineering services through the 8(a) program.

Third, there may be some abuse of the minority business program when agencies procure these services directly. There may be businesses who claim to be minority businesses while in fact they may not be, and agencies are taking their word for it.

Nearly all agencies use this standard form 254 for architect-engineer qualification. One of the questions on SF-254 is regarding the company's minority status. If you check "yes" on this question, you are a minority business in the U.S. Government computer. Only by working through the SBA or some sort of investigation of each firm can such abuses be eliminated.

Finally, in February 1983, SBA informed me that they had located contract supports for my business, and that I could submit a business plan. This was actually a result of my own hard work.

Over a 3-year period, I had obtained letters from various agencies showing contract support.

This, in my opinion, is an undue burden placed on a struggling small business. Most small disadvantaged businesses will give up rather than go through this much trouble. As of today, my application is still being considered by the SBA, and hopefully it will be accepted this time.

Mr. Chairman, I would like to request the Congress to expand the SBA 8(a) program to all agencies, and require that no firm in the program continue to stay in it beyond its targeted date of graduation. Mr. Chairman, I sincerely believe that H.R. 863 will hurt hundreds of small disadvantaged businesses who deserve a chance, and it will help only a handful of large firms who have had plenty of assistance from the Government, and should be on their own by now.

I request this committee and the Congress to look after the interests of those hundreds of small disadvantaged businesses, and give them a chance to participate.

Mr. Chairman, I thank you and the committee for allowing me to make this presentation, and I will be happy to answer any questions you may have.

[Mr. Patel's prepared statement follows:]

PREPARED STATEMENT OF V. H. PATEL, PRESIDENT, PATEL STRUCTURAL ENGINEERING CONSULTANTS, INC.

Mr. Chairman, I am the owner of a small consulting engineering firm in Charlotte, North Carolina. After graduating from the University of Michigan in 1961 and after nearly two decades of engineering experience, I decided to fulfill my American dream and start my own business in 1980. With my experience, education and dedication, I had all the ingredients necessary for a successful business in a free enterprise marketplace.

During my 22 years of engineering experience, I have been involved in the structural design of many high rise buildings, hospitals, waste water treatment plants, industrial plants and many other types of structures. A structural engineer is responsible for the design of building skeletons and the foundations and for assuring that the structure can support all the loads imposed on it and also withstand wind and earthquake forces. The engineer works in close cooperation with the architects and other engineering disciplines.

I soon realized that I faced plenty of bias and disadvantages not common to other businessmen. It is extremely difficult for a person of a different culture, race, religion or national origin to get his foot in the door and get his share of business. The prejudice suffered by ethnic Americans is very subtle and cannot be easily proven. In the architectural and engineering professions the most qualified firm does not necessarily get the job in the private sector. To obtain a contract for a U.S. government project is rather difficult for a small company. All U.S. government procurement opportunities are published in the Commerce Business Daily. Almost all the announcements in CBD state that the small and minority owned firms, and the firms with no prior experience on government projects, are encouraged to apply. Yet under the provisions of the Brooks bill, the agencies are required to negotiate only with the highest ranked firms. Since a firm's rank is based on its past experience on government projects and its size, among other things, a small minority firm has practically no chance to successfully compete.

In January, 1980, I applied for admission into the 8(a) program of the Small Business Administration. The program is created by the Congress to help small and minority owned businesses become competitive by assisting them for a period of 3 to 5 years. My application and subsequent appeal were rejected by the SBA on the grounds that there was not enough work available and that I had failed to prove that I am a socially and economically disadvantaged person. In July, 1980, the National Association of Americans of Asian Indian descent and seven businessmen of Asian Indian origin filed a petition with the SBA to classify Asian Indians as a socially disadvantaged group. I was one of the co-petitioners. Our petition was backed

by massive evidence and statistics from the U.S. Department of Commerce studies that showed that Asian Indian businessmen suffer from many biases and prejudices. The petition was granted by the SBA in August, 1982.

Again in July, 1982, I applied for admission into the SBA 8(a) program. Again, I was told that there was no contract support available. There are two main reasons for the difficulties faced by companies like mine in getting into the program. One is that many companies have been in the program for too long. The purpose of the program is to help disadvantaged firms become self-supporting and competitive in 5 years. If admitted into the program, we intend to become a viable and competitive business in 5 years. Not only will we achieve this in the area of structural engineering, which is our specialty, but we intend to enter other branches of engineering and architecture and be self-supporting in 5 years.

This is a reasonable goal and can be achieved by anyone who tries. In my opinion, many firms in the program feel that the government should support them forever. The program and the companies must work towards the graduation in no more than 5 years. Any company that is not trying to expand into commercial markets while in the program is not being fair to other smaller disadvantaged firms who deserve a chance. If a firm cannot expand into commercial markets in 5 years it would seem to me that it has not ability or intention of becoming an independent business capable of surviving in a capitalist society.

The second reason many companies have difficulty getting into the 8(a) program is that many government agencies do not participate in the 8(a) program. The U.S. Department of Defense is the largest purchaser of engineering services. Yet the Air Force and the Army Corps of Engineers participate in the 8(a) program only to a certain extent, and the Navy Engineering Command flatly refuses to participate. Yet, after my application was rejected last August, I contacted over 100 U.S. government offices that buy engineering services and obtained letters from several agencies indicating their support for engineering services through the 8(a) program.

Thirdly, there may be some abuse of the minority business program when agencies procure these services directly. There may be businesses who claim to be minority businesses, while in fact they may not be and the agencies are taking their word for it. Nearly all agencies use Standard Form 254 for architect-engineer qualification. One of the questions of SF254 regards to company's minority status. If you check "yes", you are a minority business in the government computer. Only by working through the SBA or some sort of investigation of each firm can such abuses be eliminated.

Finally, in February of 1983 SBA informed me that they had located contract supports for my business and that I could submit a business plan. This was actually a result of my own hard work. Over a three-year period I obtained letters from various agencies showing contract support. This is, in my opinion, an undue burden placed on a struggling small business. Most small disadvantaged businesses will give up rather than go through this much trouble. As of today, my application is still being considered by the SBA and, hopefully, it will be accepted this time.

Mr. Chairman, I would like to request the Congress expand the SBA 8(a) program to all agencies and require that no firm in the program continue to stay in it beyond its targeted date of graduation. Mr. Chairman, I sincerely believe that H.R. 863 will hurt hundreds of small disadvantaged businesses who deserve a chance, and it will help only a handful of large firms who have had plenty of assistance from the government and who should be on their own by now. I request this Committee and the Congress look after the interests of those hundreds of small disadvantaged businesses and give them a chance to participate.

Mr. Chairman, I thank you and the Committee for allowing me to make this presentation. I would be happy to answer any questions you or other Members may have.

Mr. MITCHELL. I thank you very much for taking the time to give us this testimony. I am beginning to sense something that I do not like very much. I am honestly beginning to sense that some effort is being made to play off one minority group against another, or one set of small businesses against another.

The reality, Mr. Patel, is that if you would go through the 8(a) portfolio, I doubt seriously that you would find as many as five minority firms in structural architecture and engineering, if that many. They are just not there. I would doubt seriously that you find five of them.

The experience that you have encountered with the military, which calls for and has the need for engineers and architects, that is the same experience that other minority architects and engineers are experiencing.

You must understand a lot of contracting is not done through the 8(a) program at all. The vast majority of it is not done through the 8(a) program. So I would suggest that I am a little uncomfortable with what appears to be a beginning of an effort to play one minority group against another, or one category of small businesses against another.

I hope that you get your contract. I am going to ask our staff to followthrough to make sure that you do have a fair chance to get your certification and your contracts. But do not, please do not assume that you are being crowded out of the 8(a) program because it is surfeited with black, or Hispanic, or other minority engineering and architectural firms. That is just not true.

Mr. PATEL. Mr. Chairman, I really regret that you would make a statement that one minority is being played against another.

Mr. MITCHELL. No, no.

Mr. PATEL. This is not true.

Mr. MITCHELL. No, I said that I was beginning to sense that somebody was trying to set up that scenario.

Mr. PATEL. I do not think that that is true either. I think that we are all working toward the same goal. I am aware of your personal contribution toward the goal of the minority businesses, and also to the Indian community. I am very much aware of it. I thank you, very much for that. But I do not think that there is any reason to believe that one minority group is being placed against another. I think that we should all work toward the same goal.

Mr. MITCHELL. Oh, I agree, I agree. But the fact that you were told that you could not get in, that there was no contract support for your engineering firm——

Mr. PATEL. Right.

Mr. MITCHELL. Because of the number of 8(a) firms that were already getting contracts in your field, is just not true.

Mr. PATEL. Are you saying that there is plenty of work available in engineering?

Mr. MITCHELL. I am saying yes, outside of the 8(a) program, there should be plenty of work. I am also saying this: That within the 8(a) program, to suggest to you that there was no contract support because there were a significant number of minority architectural and engineering firms in the program that have been there a long time and that is why you could not get in, I suggest to you is not true. There is the danger, it seems to me.

Thank you, very much.

Mr. PATEL. Thank you, sir.

Mr. MITCHELL. Unfortunately, Mr. Lepow, we just got notice of a vote. Could you come up for just a moment, please. I was talking with my staff. Undoubtedly, you are recognized as one of the legal experts in this whole area of minority business.

I really feel very uncomfortable about asking you to present your testimony when we do not have the members here to avail themselves of that knowledge and the big show is over, and the audience has dwindled.

I was trying to figure out a way in which we could try to set up something where we could have more members. You are recognized as the legal expert, and I think that your expertise should be made available to the largest number of people.

I would suggest if it is agreeable to you that for now you simply enter your testimony into the record, and let us explore the possibility maybe at some future hearing, either at the full committee level or at this level, to get you back for your verbal testimony.

I just think that it is a little unfair to you for us to take your testimony with me being the only member here and when the others, whether they oppose your position or accept it, are not available to raise questions. Is that a satisfactory way of doing it?

TESTIMONY OF LESLIE H. LEPOW, ESQ., SQUIRE, SANDERS & DEMPSEY

Mr. LEPOW. That is fine. If you do not mind, I would like to submit in addition to my prepared testimony which you already have a brief letter commenting on the statements of the other witnesses over the past 2 days, if you have no objection to that.

I have been here for the past 2 days. Some of the statements which have been made by some of the witnesses are somewhat misleading, and miscast what I perceive to be the role of the 8(a) program.

I was somewhat surprised that Administrator Sanders views the maximum practical opportunity of business development being one of bringing in the maximum number of firms. I think that the "one-size-fits-all revolving door" approach to business development was not countenanced by the Congress.

I think that Administrator Sanders is indeed setting up contract brokering programs and not business development programs. I would like to have an opportunity to point out some of the inconsistencies, having been here for the past 2 days, and observing the statements of the other witnesses.

Mr. MITCHELL. I would appreciate it very much if that letter in addition to your testimony is submitted for the record, if there is no objection to it being submitted.

Mr. LEPOW. Thank you, very much.

[Mr. Lepow's prepared statement with attachments follows:]

PREPARED STATEMENT OF LESLIE H. LEPOW, ESQ., SQUIRE SANDERS & DEMPSEY

Mr. Chairman. Thank you for your invitation to testify before the subcommittee this morning on this critical piece of legislation. Over the past 9 years I have represented more than 30 firms in a variety of industries which have participated in Small Business Administration's Section 8(a) Program. Never has the survival of the Program been more threatened than in the past 2 years. I should, at the outset state my biases. I believe the 8(a) Program is workable. I agree with the finding of the Congress that it is in the national interest to expeditiously ameliorate the conditions of businesses owned by socially and economically disadvantaged persons and that the federal procurement process is a vehicle for achieving this goal. I believe that the 8(a) Program has successfully advanced the competitive position of minority business. I have watched many minority businesses utilize the 8(a) Program to develop from small, inexperienced operations to sophisticated, competitive businesses capable of successful performance in the marketplace while contributing to their community.

The invitation to testify this morning asked that my comments focus on the three primary features of H.R. 863: criteria for graduation/termination; the applicability of size standards to 8(a) firms; and due process guarantees for 8(a) concerns. I will

address each point. Under the current Administration, each has been misused, to the detriment of not only current 8(a) participants but of the entire minority business community.

CRITERIA FOR GRADUATION TERMINATION

H.R. 863 requires the Small Business Administration to develop "criteria of competitiveness" standards which would represent the quantitative yardsticks by which SBA would measure an 8(a) firm's progress towards graduation. It is not only entirely appropriate, but also, unfortunately, necessary, that Congress, once again, direct the promulgation of specific regulations dealing with graduation. Hopefully, this time SBA will heed the Congressional mandate.

In 1980 Congress passed P.L. No. 96-481 which required the promulgation of graduation regulations. While the original bill called for a five year uniform cap on Program participation, this proposal was rejected in favor of more individually tailored terms. The legislative history of Public Law No. 96-481 shows that Congress envisioned that each 8(a) participant would negotiate with SBA the length of its tenure in the 8(a) Program, and business support during that time based on its particular industry, section of the country, competitive market, and other criteria geared toward facilitating its ultimate success. Unfortunately, SBA's regulations imposed what Congress specifically rejected. SBA established a five-year maximum fixed program participation term for all industries, regardless of industry characteristics, geography, availability of private sector capital or other circumstances. Congress required that an 8(a) firm be able to negotiate an extension of it term in the Program if later business development so required. SBA set maximum 2-year cap on any extensions.

SBA adopted an economic model for determining how long a firm can participate in the 8(a) Program. The model does not differentiate among industries: the same questions are asked of all firms; the same points are given, regardless of how diverse the industries. Questions in the model which focus on contract size and net worth without giving weight to the costs of doing business penalize firms in capital intensive industries. This is unfair to 8(a) petroleum products resellers. The model penalizes a firm's tenure in the Program regardless of the "learning curve" appropriate to that industry. This is unfair to firms in industries with high barriers to entry and significant customer preference problems. The model penalizes a firm getting a higher number of contracts, regardless of the dollar value of those contracts. This is unfair to certain services firms. The model penalizes those firms given working capital assistance. This aspect of the model hurts certain commodities dealers. The model can be characterized as "fair" only in that is distorts all industries and judges all firms by criteria wholly applicable to none.

These Fixed Program Participation Term (FPPT) Regulations adopted by SBA in November of 1981 and contained in 13 C.F.R. §124.1-1(f) disregarded differences among industries, geographic locale and availability of capital—all factors Congress required SBA to consider.[1] The effect of SBA's regulations has been the adoption of a revolving door, one-size-fits-all approach to business development.

Critics of 8(a) have stated that this SBA action was necessary, claiming that too few 8(a) firms have lingered too long in the Program and have garnered too high a percentage of the total contracts awarded. These critics overlook several facts, most importantly, the counter-productive effect of the FPPT regulations on the 8(a) Program.

These regulations were ostensibly designed to remove "long term" 8(a) participants so that the benefits of the 8(a) Program could be made available to more minority businesses. However, they have merely served as a convenient vehicle for SBA to drastically cut support for current participants, without increasing support to newer firms. Last year, for the first time in 13 years, the volume of 8(a) contracts awarded decreased. During the last fiscal year Congress appropriated $20 million for business development for 8(a) firms; SBA only obligated $6.2 million of this. During the last fiscal year Congress appropriated $10 million for management and technical assistance to 8(a) and other disadvantaged firms; SBA only obligated 58 percent of these funds. The record is clear. SBA is not introducing new firms and expanding the Program. It is using these regulations as a vehicle to winnow the 8(a) portfolio and reduce the commitment to the minority community.

It is, therefore, highly appropriate that Congress once again tell SBA what specific criteria should be used to measure an 8(a) firm's progress. SBA has already once ignored Congressional suggestions and needs stronger direction, not merely the sug-

[1] *See* H. Conf. Rept. 96-1434, S. Rept. 96-974.

gestions of legislative history as was the case with 96-481 but the stronger dictates of statute as is the case with H.R. 863. Only in this way can SBA insure that firms will be given the best chance to attain competitive viability.

SIZE STANDARDS

H.R. 863 proposes to discount the number of employees/amount of revenues attributable to 8(a) contracts for purposes of SBA size determination. I categorically endorse this sorely needed improvement. It will eliminate SBA's cynical and cavalier attitude towards 8(a) firms' business volumes. I view SBA's posture on this problem as cavalier for a number of reasons.

In January, 1981, SBA issued a regulation codifying its historic practice of treating size determinations of 8(a) firms as merely advisory to the Associate Administrator for purposes of eligibility for all aspects of the 8(a) Programs. However, on June 16, 1982, the General Accounting Office issued a decision which, in effect, held that SBA did not have the legal authority to award 8(a) contracts to other than "small businesses" as defined under relevant regulations (Computer Data Systems, Inc. B-205521). SBA asked for and received a reconsideration, but GAO reaffirmed its prior holding (B-205521.3, B-205521.4, July 26, 1982). On July 30, 1982, the U.S. District Court for the District of Columbia, in a case presenting the same issue, concluded under section 8(a) to an other than small business concern. Systems and Applied Sciences Corp. v. Sanders, Civil Action No. 82-1824, 82-1966, 82-1969 (D.D.C., decided July 30, 1982).

Prior to the court decision, SBA contended that, for some unexplained reason, it lacked the authority to promulgate special size standads for 8(a) firms despite the fact that SBA has the clear statutory authority to set such standards (see Section (3) of the Small Business Act). SBA has historically used different size standards for different programs, such as loans, eligibility for SBIC assistance, and procurement. SBA chose to apply the standards used in procurement to the 8(a) program. However, as the Court in the above cited case unequivocally stated, ". . . SBA could have administratively created different size standards for 8(a) as opposed to non-9(a) concerns." SBA chose to bind its own hands and then disingenously claim that it could do nothing.

On August 17, 1982, SBA did finally publish an interim emergency regulation (47 Fed. Reg. 35755, et seq.) which provided an alternative size standard based on net worth and net income for presently participating 8(a) firms. The regulation was effective upon date of publication and expired in 180 days.

This sudden action by SBA was cynical and cavalier for several reasons. First, SBA knew at all times that it could issue separate size standards for 8(a) procurement purposes. Indeed in September of 1981, well before the GAO decision initiated the crisis, several 8(a) firms petitioned the agency for such a rule, pointing out that 8(a)-generated receipts distorted the true size of firms in industries where size was based on revenues. Had the agency acted on this petition, the whole farce of the GAO action and SBA interim rule could have been avoided. Second, SBA's last minute, half-hearted action caused the affected 8(a) firms to unnecessarily lose many crucial third and fourth quarter contract opportunities. A recent White House memorandum on this point recognizes this fact. Third, and most important, SBA Administrator Sanders has recently asserted that 8(a) receipts should be counted in size calculations because receipts are receipts regardless of the contract source. This assertion purposely ignores the fundamental dissimilarity of 8(a) contracts and competitive government contracts, and fundamental differences between commercial and government customers. It forces firms to forego business to remain eligible for the program because the current size standards, set in 1974, and insensitive to inflation, are so low, as SBA itself has recognized.

Despite the problems caused by the application of SBA's current outmoded size standards to the 8(a) Program, SBA has refused to adopt size standards which recognize the realities of the 8(a) Program. If standards such as those proposed in this bill are not adopted, more 8(a) firms will inevitably suffer the fate of P&B Services of Washington. Found "other than small", and therefore abruptly denied 8(a) contract support, it went bankrupt. All support previously awarded to this firm over the years was totally wasted, because SBA cavalierly chose to use P&B's size, distorted by that same 8(a) support, as a club to remove the firm prematurely.

DUE PROCESS GUARANTEES

On May 1, 1981 former Administrator Michael Cardenas held a celebrated press conference in which he announced a "hit list" of the 50 largest 8(a) firms in the portfolio. Since then, large numbers of 8(a) firms have had contracting opportunities

"chilled" because they were on lists SBA circulated to procuring agencies. The same problem occurred more recently when 21 firms were expelled from the Program this past February 14th. Even before the recent GAO decision in *Computer Data Systems* and the recent federal court decision in *Systems and Applied Sciences*, SBA balked on processing 8(a) contracts to firms it suspected of being "other than small." All of those firms, even those who were never found to be other than small, suffered this "chilling effect." More importantly, SBA requirements of Central Office approval of contracts to certain targeted firms resulted in procurement agencies abandoning efforts to provide contracts to those firms.

By adopting a 6-month special size standard, SBA halfheartedly attempted to alleviate the problems befalling the 21 "other than small" firms. However, not surprisingly, procuring agencies this time were reluctant to offer contract support because of SBA's inconsistent attitudes towards the firms. In fact, many procuring agencies have become reluctant to offer 8(a) contracts to any firms, not knowing when SBA will issue yet another hit list or establish new procedures adding new levels of bureaucratic delay to the contracting process.

As a result of SBA's conflicting policies on size, "on-again, off-again" requirements of Central Office approval for contracts normally approved at the local level and the publication of "hit lists", firms have been placed in a kind of limbo. Although ostensibly still full participants in the 8(a) Program, these firms have received what little contract support they have only after lengthy and unnecessary delays. Simply because a firm's name may have appeared on a list two years ago, procurement officials from every agency often refuse to even consider this firm for possible contracts for fear that not only will more work be entailed in giving a contract to one of these target firms, but that ultimately SBA may abruptly and capriciously pull the rug of 8(a) eligibility out from under the firm. For over a year SBA callously allowed firms to dangle in the limbo of de facto termination, while contracting opportunities were chilled and often lost.

SBA has not reformed. A recent working draft of the proposed revisions to 13 C.F.R. § 124 reveals that SBA is considering adopting its own suspension regulations which would go beyond the DAR or FPR suspension provisions. It is unfortunate to see that SBA, the agency mandated to championing minority business development appears to spend more time policing 8(a) firms than promoting them.

A "POST-GRADUATE" PROGRAM

Compounding the problems SBA has caused 8(a) firms by promulgating FPPT regulations unrelated to economic reality, by applying outmoded size standards, by chilling contract opportunities, by under-utilizing appropriated resources and cutting the 8(a) staff, is the lack of any program to help ensure a smooth transition to the totally competitive marketplace. We have reached the point in the history of the 8(a) Program when hundreds of firms are beginning to 'graduate', due to the cavalier application of size standards, the expiration of fixed terms or whatever. Many of these firms will be dealt a severe blow by the loss of 8(a) support and may be forced to fold. Some have closed their doors already. I strongly recommend that this committee consider the creation of a competitive minority business program similar to the current small business set-aside program in which 8(a) graduates would compete amongst themselves and with other minority firms for a period of 18 to 24 months after their 8(a) Program tenure has expired. Such a program would supplement, not replace the 8(a) Program. It would go far to helping build a solid base of strong minority businesses, the original and still worthwhile goal of the 8(a) Program.

CONCLUSION

I would like to conclude my comments by making a few additional observations about SBA's performance and attitude in the last few years. I commented earlier on SBA's abysmal performance in Fiscal Year 1982 in utilizing the funds appropriated by Congress for business development for 8(a) firms. SBA's attitude seems to be that it will keep the 8(a) Program going, but will not seek to promote it or work toward achieving a better system that will truly benefit the participating firms as well as serve the goals set forth for the program by Congress.

What is perhaps worse, is that SBA's unenthusiastic attitude toward the 8(a) Program has carried over to its dealings with the procuring agencies, and affected their willingness to let out contracts to 8(a) firms. The First Quarter 1983 minority business award figures of Defense procuring agencies have shown little attempt to advance the purposes of the 8(a) Program. Procuring agencies are particularly reluctant to let large contracts to 8(a) firms despite SBA's endorsement of the firm. I have seen a recent example of this with the Navy, which has refused to set a con-

tract aside for an 8(a) construction firm in Massachusetts fully capable of performing the contract apparently because of what it considers to be the large dollar value of the contract. This type of attitude must change if the 8(a) Program is to achieve the goals it was created to serve. SBA must be a stronger advocate for the 8(a) Program with the procuring agencies, and must develop procedures and regulations that will facilitate instead of inhibit the efficient functioning of the 8(a) Program. The standards and criteria set out in H.R. 863 will be of great assistance in directing SBA toward this goal.

SQUIRE, SANDERS & DEMPSEY,
COUNSELLORS AT LAW,
Washington, D.C., April 29, 1983.

Hon. PARREN J. MITCHELL,
Chairman, Committee on Small Business, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN MITCHELL: I very much appreciate the opportunity to testify before the Subcommittee on April 20th on H.R. 863 and wanted to avail myself of your offer to permit me to expend my comments about the statements of other witnesses during the hearings.

Witnesses for the Defense Department and GSA stated that they viewed Fixed Program Participation Terms (FPPTs) as an appropriate method of graduate firms. However, whatever the merits of FPPTs as a "method", in practice, the overall effect the process has had on the 8(a) Program has been near disastrous. First quarter fiscal 1983 § 8(a) Defense Department awards are well below comparable fiscal 1982 levels.[1] Many firms' 8(a) revenues have decreased drastically without warning. Directly contrary to assurances which firms received from SBA, GAO may be taking the position that options to 8(a) contracts cannot be exercised after a firm's FPPT has expired. SBA has provided firms with little if any reliable guidance during this transition to FPPTs. In fact, recent 8(a) program staff reductions and failures to expend congressionally-authorized business development and management assistance funds have needlessly exacerbated the above mentioned problems. In short, the FPPT process and concomitant staff and resource cuts are chilling contract opportunities, effectively forcing firms out of the program even before their FPPTs would expire.

Several witnesses complained that potential Section 8(a) entrants are denied entry into the Program and contracts because incumbent firms have been in the Program too long. I find this hard to believe. Section 8(a) dollars represent at most, 2-3% of all federal procurement dollars. A firm's inability to get support or certification more likely results from SBA's staff cutbacks, SBA's unwillingness to seek more contract opportunities, SBA's moratorium on certifications and SBA's lack of staff to conduct searches for prospective 8(a) firms than from the presence of other minority firms in the Program. As several other witnesses pointed out, SBA turned back contracts last year. It is inconceivable that all of these contracts were so unfavorable that SBA could not have negotiated terms so that an 8(a) firm could have performed the contract and made a profit.

SBA Administrator Sanders would have us believe that the only goal of the 8(a) Program is to bring in the greatest number of 8(a) firms without regard to the quality of assistance provided to these firms. Indeed, he believes that bringing firms in and getting them out, whether or not they have received effective assistance during their time in the Program is what is called for. In effect, Mr. Sanders appears to believe that the "maximum practicable opportunity to develop [disadvantaged small businesses]", the goal of the statute, really means applying the minimum amount of 8(a) support to the maximum number of firms.

I disagree. The statute's purpose is to promote the maximum practicable opportunity for socially disadvantaged firms to develop into competitively viable firms, without regard to time. Time on the program is functionally irrelevant to the congressional mandate that 8(a) assistance should focus on ameliorating a firm's impaired access to credit and capital. The program should be geared to business development, not contract brokering. Congress called for graduation regulations based on the firm's particular industry, geographic market, access to capital, etc. SBA's regulations are based on a different principle—one size fits all. It's not surprising that the witness from GSA said that "only if SBA has prepared new 8(a) contractors to step in and fill the void" can GSA possibly absorb the 47 percent loss in 8(a) busi-

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[1] *See* Attachment A.

ness currently performed by firms about to graduate without decreasing awards. Obviously, GSA officials are scared that they will be unable to maintain 8(a) awards. How can SBA have prepared new 8(a) contractors when it refuses to utilize its congressionally appropriated business development and management assistance budget?

One strong undercurrent running through the testimony of most witnesses was that SBA is not an effective advocate for 8(a) firms. The dilemma of size standards as they apply to 8(a) firms was not new to SBA. 8(a) firms petitioned SBA for a separate size standard well before the GAO [2] and SASC [3] decisions, to no avail. Why is it MBDA is attempting to come up with a "bridge" program which SBA should have planned in advance? Why did SBA ignore the legislative history of 96-481 and come up with one economic model for all firms, not one based on each industry's dynamics? Why does SBA give such inconsistent direction to 8(a) firms and procuring agencies in terms of contracting authority? As a result of SBA's history of indifference to the 8(a) Program's needs, more and more procuring agencies are increasingly denying 8(a) opportunities to firms.

We need H.R. 863 because SBA must be forced to adopt industry-sensitive criteria for graduation. We need H.R. 863 because, left to its own devices, SBA will continue to use outmoded size standards as a club against 8(a) firms, forcing them to lose up to 50 percent of their receipts. I endorse H.R. 863 so that firms may be accorded due process.

Thank you for permitting me to submit this letter.

Sincerely,

LESLIE H. LEPOW.

ATTACHMENT A.—SMALL DISADVANTAGED BUSINESS AWARDS, FIRST QUARTER COMPARATIVE PERFORMANCE

[Dollars in millions by fiscal year]

	Total awards	8A	DIR	Total	Percent
SBD AWARDS					
Army:					
1982	$3,614	$96	$66	$162	4.5
1983	4,799	115	40	155	3.2
Navy:					
1982	3,340	7	8	15	.4
1983	8,772	20	29	49	.6
Air Force:					
1982	7,332	80	35	115	1.6
1983	10,113	74	43	117	1.2
DLA:					
1982	5,986	211	132	343	5.7
1983	4,213	127	54	181	4.3
DOD: [1]					
1982	20,784	395	243	638	3.1
1983	28,430	337	168	505	1.8

[1] DOD totals include awards to other defense agencies.

Mr. MITCHELL. I apologize; we are spread so thinly right now in the Congress. I just did not want you to present your testimony absent members from either side.

Mr. LEPOW. That is quite all right. I understand.

Mr. MITCHELL. Thank you, very much for understanding.

I thank you all for participating in the hearing. The hearing is now adjourned.

[Whereupon at 1:37 p.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

[2] Computer Data Systems, Inc. B-205521 (June 16, 1982).

[3] Systems and *Applied Sciences Corp.* v. *Sanders*, 544 F. Supp. 576 (D.D.C. 1982).

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